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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT  
EMPLOYMENT STANDARDS AMENDMENT ACT

TUESDAY, JANUARY 3, 1989





STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Offer

Campbell, Sterling (Sudbury L) for Mr. McGuinty

Elliot, R. Walter (Halton North L) for Mr. Callahan

Hart, Christine E. (York East L) for Mr. Mahoney

Kormos, Peter (Welland-Thorold NDP) for Mr. Farnan

Sola, John (Mississauga East L) for Mr. Polsinelli

Also taking part:

Philip, Ed (Etobicoke-Rexdale NDP)

Clerk: Deller, Deborah

Staff:

Mifsud, Lucinda, Legislative Counsel

Swift, Susan, Research Officer, Legislative Research Service

Witness:

From the Ministry of the Solicitor General:

Spring, David, Director, Legal Branch





LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, January 3, 1989

The committee met at 3:36 p.m. in room 151.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT  
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act.

Section 3:

The Vice-Chairman: We are in the process of dealing with clause-by-clause consideration of Bill 113, the Retail Business Holidays Amendment Act. When the committee adjourned on December 13, it was considering an amendment by Mr. Kanter on subsection 3(1). That is the section relating to drugstore square footage. My understanding is that the order of business for the committee will be to complete that particular motion.

Next will be an amendment by the government side to subsection 3(2), which relates to a one-year transition period for pharmacies. After that, there is an outstanding motion on section 4 of the bill, subsection (5)(1) of the act, moved by Mr. Runciman on December 12, which was stood down pending information to be provided by Mr. Spring. That is dealing with the religion of the owner of a retail business.

My understanding is that Mr. Hampton had the floor on Mr. Kanter's motion when we adjourned on December 13. I will ask Mr. Hampton if he wishes to continue.

Mr. Hampton: Happy new year, everyone. It is nice to see that Mr. Ballinger has not made any new year's resolutions that might affect his behaviour in the committee.

Mr. Ballinger: Ho ho ho to you too.

Mr. Hampton: I did want to make a few further comments. I wish we had available to us a copy of Hansard from the last date, because I do not want to repeat myself in terms of what I was going to say.

What I note, though, is that over the holidays it would appear that we have received even more information on one of the issues that we were talking about in terms of the square footage of drugstores. I note that the Ontario Convenience Stores Association, the Retail Merchants Association of Canada (Ontario) Inc. and the Canadian Federation of Independent Grocers have now submitted other material on the issue of the square footage of drugstores.

I think what is of particular interest is the information that was submitted by the Retail Merchants Association and the Canadian Federation of Independent Grocers on December 21. They have done further research on the issue. It seems to me, just reading some of the underlined comments that they make—on page 2 they state, "In every case—except Cornwall—local government officials stated that Sunday service"—and I can insert the words "in drugstores"—"was being offered by a store under 5,000 square feet."



That is their analysis of what facilities in terms of drugstores are available now. I think that bears very much on the issue under discussion as to whether the legislation ought to limit drugstores to 5,000 square feet and less or whether it ought to be 7,500 square feet and less. As I said earlier in my remarks, I think this issue deserves further consideration.

Both the Canadian Federation of Independent Grocers and the Retail Merchants Association, as their letter indicates, have done some fairly careful research on this issue. The conclusion I would draw from it is that a limitation of 5,000 square feet or less is adequate and that in going to the larger number, 7,500 square feet, we are inviting the recurrence of some of the problems that the Solicitor General (Mrs. Smith) spoke about in her opening address to this committee: by allowing very large drugstores to open, in effect you allow abuses to the legislation which result in the legislation's being termed unfair by other stores that are not drugstores and, in the end, the government's terming the legislation unenforceable.

I think if the government follows through on its proposal to increase the limitation to 7,500 square feet, it is merely inviting the same problem to recur, the same problem which the government says it wants to solve in bringing in the new legislation. So I would urge all members, particularly government members, to have a look at the response from the Ontario Convenience Stores Association dated December 9 and the response from the Retail Merchants Association and the Canadian Federation of Independent Grocers dated December 21. I repeat, we feel that 5,000 square feet in terms of a limitation for drugstore size is adequate. Those are all the remarks I have to make.

The Vice-Chairman: Thank you. Do any other members of the committee wish to debate this particular motion?

Mr. Kormos: I have a question, and my apologies in the event that it has already been answered: Does the clause, as contained in the amendments, provide or is it intended to provide—

The Vice-Chairman: Excuse me, Mr. Kormos. To whom are you directing the question?

Mr. Kormos: To you, Mr. Chairman. Does it provide for roping off or barring off certain areas of a store in the event that the total square footage of a retail place exceeds 5,000 or, if the amendments pass, 7,500 square feet, so that the public is excluded from certain areas? Is the intent of the amendment contained in the bill such that an area could be roped off or barred to the public, so that one could restrict the square footage for the purpose of falling within the exemption?

The Vice-Chairman: It is my understanding that the roping off concept is prohibited by the bill and the new act, but I will defer that question to Mr. Spring and perhaps he can answer it in a more technical fashion.

Mr. Spring: Reference in this case, I believe, should be made to subsection 7(6) of the act, as enacted by section 6 of the bill, which speaks in terms of roping off being prohibited. The effect of that section is to prohibit roping off in drugstores, especially immediately the bill comes into effect. Other stores are given a year's grace to comply. Drugstores would have to comply immediately. In other words, no roping off would be permitted once this bill comes into effect if it comes into effect in its present form.



The Vice-Chairman: Thank you. Does that sufficiently answer your question?

Mr. Kormos: Yes. I think it is important that that be made clear, not just for the here and now but for after the fact, when people are charged and when people attempt that sort of exercise.

Mr. Ballinger: On a point of order, Mr. Chairman: As a member of this committee, it is quite clear to me. Mr Kormos asked the question. I am wondering who he is directing his comments to. It should be made quite clear. Who are you speaking of?

The Vice-Chairman: Mr. Ballinger, I wish you would put your questions through the chair. You have raised a point of order which I do not feel is a legitimate point of order. I am basically ruling that there was a legitimate legal question being asked, which was referred for legal advice and was answered, and I believe that should be the end of it.

Mr. Kormos: I agree.

The Vice-Chairman: Okay, fine. Any further debate on the issue? Mr. Kormos?

Mr. Kormos: I want to comment on it. I appreciate that being pointed out, not only to myself but also to everybody, and clarified.

The intent of the act, as amended and as it exists now, would appear to be twofold: first, to avoid scenarios wherein there is, let's say, a sense of unfair competition between retailers and, second and perhaps more important, certainly in my mind, to avoid the requirement that people work on a Sunday; that is to say, to strengthen or reinforce the concept of a common pause day, a common day of rest—and we have discussed all this, or you certainly have far more than I have—be it for religious purposes or the purpose of family or mere rest for those who work five and six days a week otherwise.

The only effect or impact of permitting increased square footage, in view of the fact that roping off is not going to be permitted by the legislation, certainly not by the legislation as it is intended, the net impact of that would be to require all those many more people to be employed. Obviously, greater square footage would have more—I have read the material that has been submitted by various lobby groups and I have spoken with various lobbyists on the matter, including Shoppers Drug Mart. The 7,500-square-foot figure rang a bell immediately, because of course that is their figure. They have lobbied long and hard for that, both in writing and in person.

Nobody, certainly from Shoppers Drug Mart, has suggested that 7,500 square feet is the square footage required to contain a pharmacy or a dispensary, and again, it is a pharmacy or dispensary because the apparent logic applied to the amendment is the need for pharmaceuticals to be dispensed, including on a Sunday, and that is the reason for the exemption.

The exemption is not an arbitrary exemption; it is not just plucking that particular retail business out of the air and saying, "Just on a purely arbitrary basis, we will let pharmacies stay open." The rationale, one can only presume—and I certainly do—is to permit pharmaceuticals to be dispensed on a Sunday because of the social good that serves, because of the health needs that serves in the community.

I come from a small community, unlike some of the people here who come



from the big city. I come from the small community of Welland-Thorold, which has been served, at least throughout my lifetime, by small, individually run pharmacies which have utilized the exemption existing under the Retail Business Holidays Act and have shared the responsibility of opening on Sundays because they genuinely regard that as a service to the community, not as an opportunity to generate profits. They recognize that their particular profession, their particular trade, is one which might require that they service the community on a Sunday, and they have shared that on a rotating basis.

I suspect that is common to almost all other communities in the province. There are some communities about which there are distinct—two, to be specific. One of the papers submitted comments that that is not the case. One of them is a community which has a hospital dispensary which is open on Sundays, certainly during peak season. The other is a community which is adjacent and really close to small communities which do have rotating Sunday pharmacies.

The small, privately run pharmacies that are not part of chains, that are what I certainly view as traditional, highly personalized, community-based pharmacies rather than chain or franchise types of pharmacies, are the ones wherein pharmacists treat their retail business as an unfortunate aspect of their profession. That is to say, for them to exercise their profession, it is necessary to operate in a retail establishment. They do not see their business as being the manager of a variety store. They do not see their job as counting pop bottles that are being returned or taking inventory of candy bars or other grocery or confectionery types of products.

1550

I know for a fact that these types of pharmacies exist in the city of Toronto too. There are simply no two ways about it. They are obvious. They are on virtually every major street in the city. They are small, individually operated and/or family run businesses where the pharmacist sees opening on Sunday as fulfilling a community need, not as an opportunity to make one more day's profits.

These pharmacies also tend to be operated primarily by the pharmacist rather than by staff that are hired on. A 7,500-square-foot pharmacy is not by any stretch of the imagination a pharmacy but for the propaganda of one particular chain which identifies itself as having an ideal square footage of 7,500, give or take, square feet.

The net effect of that is to defeat the whole intent and purpose of the bill. The primary intent or purpose, which I submit and we all know, is to avoid the necessity of people working on Sundays. There is no way. There is not a snowball's chance in Hades of a 7,500-square-foot pharmacy being manned or operated on a Sunday totally by the pharmacist. It is going to require staffing that is not insubstantial.

The original proposal was one of 5,000 square feet. I understand that that was the result of research undertaken during the course of preparation of the bill. The amendment to 7,500 square feet, in my view, is not an attempt to rectify an error in calculations or an error in research that originally took place. It is but a knee-jerk reaction, and not so subtle at all, to direct lobbying by a wealthy and very visible chain. I am speaking specifically of Shoppers Drug Mart.

It is sad and shameful that there would be that type of knee-jerk



reaction. That type of knee-jerk reaction basically turns a blind eye to a profession which has served the community for many, many years, not just decades but indeed generations. I am talking about the small, privately run, nonchain, nonfranchised pharmacy.

The net effect will be not just to require people to work on Sundays, people who otherwise would not have to work in the Shoppers Drug Mart type of store, but also to put the small independent pharmacist out of business. If there are complaints—and part of the rationale used by Shoppers Drug Mart in its lobbying is the presence of a pharmacy in any given community. In fact, the net effect of letting Shoppers Drug Mart overwhelm or have a presence in what should be merely a service aspect, that is to say Sunday opening, will be to add to the tendency to put small pharmacies out of business.

For those reasons, and I will not belabour the point, I am totally opposed to the amendment. There is no logic to it. It is fulfilling some sort of commitment to a particular lobby group. At the same time, it is denying the intent of the bill and ignoring those pharmacists running small privately run pharmacies which are not 7,500 square feet—we all know that—who have dedicated lifetimes and in some cases are into second and third generations of operating pharmacies.

This is to ignore them and indeed to slap them in the face with their many years of service to the community, to wit, Sunday opening they see as a sacrifice, not as something they look forward to. They see it as a sacrifice, as one that they have shared.

Mr. Campbell: I guess when you are dealing with different parts of the province, maybe it is different in Sudbury than in Welland-Thorold, but I can assure the member for Welland-Thorold that the pharmacies of which he speaks would be similar in Sudbury, which I have spoken to on this issue.

I think he implies that those around 5,000 square feet are mom-and-pop kinds of pharmacies, if I can use that term, and none of them would not want to open on Sunday because they do not see it as part of their practice. I say that in the context of trying to attract to our community a pharmacy service that would be open on Sunday that would be nonhospital.

I think that to say that it is one chain—in fact, in Sudbury, there are two or three independents that are of a size between 5,000 square feet and 7,500 square feet that would look now to be viable Sunday operations, because they are open on Sundays. The chain is represented in Sudbury; it is also open.

It is a general feeling, I think, that the smaller pharmacies that he speaks of would not be using the competition argument that I think you were speaking to. It would not be their scope of practice to be open on Saturdays or Sundays. I do not think it has anything to do with the competition.

I guess what I am saying is that the smaller operations deal on a five-days-a-week basis. In some communities it is very difficult, if you do not have the diversity in the pharmacy industry, to have that kind of service outside of larger metropolitan areas.

The Vice-Chairman: Is there any other debate on this particular motion? If not, I will put the question. I will read the motion just to clarify. It is a government motion moved by Mr. Kanter that clause 3(2)(c) of the act, as set out in subsection 3(1) of the bill, be amended by striking out

"5,000" in the last line and inserting in lieu thereof "7,500." It deals with the size of pharmacies.

All those in favour of the motion?

All those opposed?

Motion agreed to.

The Vice-Chairman: The next order of business is an amendment moved by the government, Mr. Kanter, to subsection 3(2), dealing with the one-year transition for those pharmacies that exceed 7,500 square feet.

Mr. Kanter moves that subsection 3(2) of the bill be struck out and the following substituted therefor:

"(2) Subsection 3(4) of the said act is repealed and the following substituted therefor:

"(4) Despite clause 3(2)(c), until the 365th day following the day this subsection comes into force, the maximum total area that may be used in a pharmacy for serving the public or for selling or displaying to the public may exceed 7,500 square feet.

"(3) Subsection 3(8) of the said act is repealed."

Is there anyone who wants to debate the motion? Mr. Kormos.

Mr. Kormos: Once again, for my benefit, all this does is replace the existing 5,000 with 7,500.

The Vice-Chairman: The one that was approved. That is correct.

Mr. Kormos: This is simply to make this conform with the amendment that was just passed.

The Vice-Chairman: No. If I can explain, the motion that is on—I will ask Mr. Kanter to explain the motion, if he would.

Mr. Kanter: Mr. Chairman, I thought you were just about to do that, but sure.

I would like to welcome everyone back to the committee. I think this is about our 56th day of hearings on this subject. I am sorry we do not have the benefit of the representatives of the third party, although they profess considerable interest in this subject of drugstores.

With respect to the clause before us, this is simply to give a one-year grace period. There are a considerable number of drugstores that will be shut down by this law. We have found in the research that various groups have done that there is a considerable number of drugstores that are larger than 7,500 square feet, in some cases just a small bit larger; in some cases, by a very substantial amount larger.

We received representations from a number of groups, the discount drugstore association, some Shoppers' Drug Mart franchisees, a number of people who were very concerned about the impact of an immediate shutdown. In many cases, they opposed the 7,500-square-foot ceiling on their operations.



They asked to have consideration to utilize the local option provision. They indicated it would take some time to go before local council. Local council might have to pass a motion to go before a regional council to get an exemption in some cases, or the other possibility, which would be to reduce their size to the 7,500-square-foot figure.

This is also consistent. This amendment would make the legislation consistent with subsection 7(6), which is the anti-roping-off provision, in which case retail businesses other than pharmacies would have 365 days following the date this subsection comes into force to comply with that provision of the bill.

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There are really two reasons. It is to permit those pharmacies that have been allowed to be open under the previous legislation some time either to reduce their size or to seek permission from municipal councils to be open even though their size is greater, and also to make some of the provisions of the act that affect pharmacies consistent with some of the provisions of the act affecting other businesses. Those are the reasons for the amendment.

I just want to add one thing, because I do not think Mr. Kormos had the advantage of travelling with us throughout the province. This is something that was requested by a number of the deputants who appeared before us, representatives of the pharmacy industry. I point out and perhaps just mention to Mr. Kormos that it is by no means the representatives of any one single chain that are affected by the motion we just passed.

I notice that Boots, Big V, IDA, Guardian, something called Drug City, Jasco, Super Discount, York Super and perhaps others are affected by the 5,000- to 7,500-square-foot amendment we have just passed. Similarly, with respect to the one-year grace period, I believe that Shoppers' Drug Mart, the discount drug association and several others requested the one-year grace period.

Mr. Kormos: Once again, when I asked the chairman some short time ago about roping off, the counsel pointed out that certainly the intent of clause 7(5)(b) was to eliminate the practice of roping off. Why then would this be necessary, in view of subsection 6, if only subsection 7(6) were amended by deleting "other than a pharmacy"?

The reason I ask that is, what is a pharmacy going to do? As Mr. Kanter points out, either they are going to get an exemption from the act by a municipal bylaw, and the one-year would be useful in that regard, or—what? Are they going to move to smaller premises or move walls inside the pharmacy to reduce the square footage from what they have presently down to 7,500 square feet or less? Why is this clause necessary when subsection 7(6) is there, but for the words "other than a pharmacy"?

Mr. Chairman: It was a grandfathering in of another item and it was felt that as a matter of fairness—

Mr. Kanter: I can take a crack at that. I might also want to call on Mr. Spring to comment on that particular question.

My understanding is that there is somewhat of a difference between pharmacies and other retail businesses and that if we did not do it this way, there could be a problem with respect to pharmacies that are now open that are

perhaps slightly larger than 7,500 square feet having to rope off for the one-year period.

The whole practice of roping off has been fraught with problems. It has not worked. It has led to people reaching under and over and all that kind of stuff. It is not an effective enforcement tool. It is not something we want to extend to anyone new, anyone who is not currently doing it.

Do not forget that the pharmacies have been legally open on Sundays. The 7,500-square-foot limit is a new rule that we are imposing, and in terms of fairness to those that are now open that are larger than 7,500 square feet, we are giving them a one-year grace period without going through the exercise of roping off, which has not been found to be a very effective enforcement tool.

That is my understanding of the reason we did not do it that way. We did not simply strike out the words "other than a pharmacy" in that section. I know there was discussion about it and I would invite Mr. Spring to comment on my answer, hopefully not to contradict it completely, but who knows?

Mr. Chairman: Are you coming forward to contradict it or to agree with it?

Mr. Spring: I am not coming forward to contradict it.

Mr. Kanter: Even if he were, I would still invite his comments.

Interjection: Especially with such a gracious tie.

Interjection: Blue and red in equal colours. You guys should ask about green.

Mr. Spring: They are certainly nicer comments, Mr. Chairman, than I had from the members of my branch this morning, I can assure you.

Mr. Ballinger: Well, let me tell you what we really think.

Mr. Spring: The way the bill was originally set up of course had subsection 7(6) in it, which speaks in terms of "other than a pharmacy." I might just point out that pharmacies were not subject to square footage requirements previously. As I recall, it was thought inequitable then to include them in here.

What, in effect, the legislation does is to afford the pharmacies the same one-year grace period as other businesses that have normally been in the position of having to rope off to comply with Sunday opening requirements, be they under section 3—in other words, the small stores category—or be they larger stores that wish to close on Saturday and open on Sunday. But they were stores that would normally utilize the roping-off sections. Pharmacies did not as there was no square footage requirement for pharmacies previously.

Accordingly, it is my belief the legislation is drafted to reflect that historical difference, if you will. I am quite prepared to submit, or at least to bow to legislative counsel in this matter, but that is my understanding of why the legislation was drafted with the two separate exemptions, one being with respect to pharmacies particularly and one being with respect to everything but pharmacies.



Mr. Chairman: Thank you very much, Mr. Spring. Any questions of Mr. Spring? You and your tie can retire.

Are there any further comments or questions by members of the committee? Are you rising to the occasion, Mr. Hampton?

Mr. Hampton: No, Mr. Chairman.

Mr. Chairman: No further questions? Are we ready to vote on the issue?

Those in favour of Mr. Kanter's amendment, please signify.

Those opposed?

Motion agreed to.

Section 4:

Mr. Chairman: The next item of business is Mr. Runciman's motion on section 4 of the bill, subsection 5(1) of the act. It was stood down pending information to be provided by Mr. Spring. It deals with the religion of the owner of a retail business. Mr. Spring, have you an answer for us on that?

If we could get that amendment, we could refresh everybody's memory with it. Just to refresh the memory of the members, on December 12, Mr. Runciman moved that subsection 5(1) of the act as set out in section 4 of the bill be amended by deleting "by reason of the religion of the owner of the retail business" and be further amended by deleting sections 5(2), 5(3), 5(4), 5(5) and 5(6).

Debate on that was stood down, pending information from Mr. Spring dealing with the religion of the owner. I think it dealt with a corporation, as I recall.

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Mr. Spring: Yes. As I recall, the question that was put by Mr. Runciman was whether there was anything in a recent decision of the Ontario Court of Appeal known as Zylberberg et al and the director of education of the Sudbury Board of Education which would cast any shadow upon the constitutionality of the amendment that is currently proposed in section 5 of the act, as enacted in section 4 of Bill 113.

Zylberberg and the Sudbury Board of Education is a recent decision of the Ontario Court of Appeal. It is probably more commonly known as the school prayers case. The question was whether the regulation, subsection 28(1), under the Education Act infringed the freedom of religion and conscience guaranteed by subsection 2(a) of the Charter of Rights and Freedoms.

That section of the regulations is entitled "Religious Exercises and Religious Education in the Public Schools," and reads as follows, "A public school shall be opened or closed each school day with religious exercises consisting of the reading of the scriptures or other suitable readings and the repeating of the Lord's prayer or other suitable prayers."

The court found that the section did in fact infringe on freedom of religion. In so holding, it said, and I am quoting from the decision now, "It

can no longer be assumed that Christian practices are acceptable to the whole community," and held that while there was a right to claim an exemption from religious exercises prescribed under the regulation, that right to claim an exemption as set out in another subsection really exerted an unacceptable pressure or compulsion to make an election—and the court emphasized this—in the consensitive setting of a public school in the atmosphere of peer pressure and classroom norms to which children are acutely sensitive.

Subsection 28(1), the court went on to point out, makes it possible for the board to prescribe Christian religious exercises. The effect of the exemption provision here was held to discriminate against religious minorities, but this must be seen, in my view, in the context of a challenge to a regulation that on its face and as held by the court violated the charter by discriminating.

The court actually went on to say: "On its face, section 28(1) infringes the freedom of conscience and religion guaranteed by section 2(a) of the charter. Section 28(1) is antithetical to the charter objective of promoting freedom of conscience and religion. The recitation of the Lord's prayer which is a Christian prayer and the reading of scriptures from the Christian Bible impose Christian observances upon non-Christian pupils and religious observances on nonbelievers."

In the case of section 5 of the act, as proposed in section 4 of the bill, however, I would submit that the thrust is to ensure religious freedom by allowing retailers to practice their religion on days other than Sunday and to suffer no economic disadvantage by doing so, by opening on Sunday in lieu of their religious day.

As Mr. Revell, the chief legislative counsel, put it last December, the second-last time the committee met, the difference in the two cases, the difference in the two fact situations is that one involves a challenge to legislation that cuts down or infringes on religious freedom—I refer here to the Zylberberg situation—while the other, the amendment before us, seeks simply to ensure that religious freedom.

The courts have held that it is the purpose of the legislation that must be looked to in deciding its true nature and its true character. The court in this case went on to say, "The Supreme Court's decision in *Edwards Books* held that the Retail Business Holidays Act, which prescribes Sunday as a holiday for retail stores, was not religiously motivated but was enacted for the secular purpose of providing uniform holidays for retail workers. Although it infringed the religious freedoms of members of minority religions whose Sabbath was on a day other than Sunday, it was held to be justifiable under section 1 and its validity under the charter was upheld."

Based on those statements of the court and based on the fact that the religious exemption in this bill appears to be considerably wider than that contained in the current legislation, it would be my view that there is nothing in the ratio of *Zylberberg* and the Director of Education of the Sudbury Board of Education which would, by itself, constitute a valid argument for suggesting that section 5 is more likely to be unconstitutional now than it was before the holding in this case. Subject to any questions there may be, those would be my comments on the matter.

Mr. Chairman: It was actually from Mr. Runciman and he is not with us, nor is any other member from that party.



Mr. Kormos: Sorry. I was going to comment. Are you going to defer this matter until Mr. Runciman can speak to it?

Mr. Chairman: Is Mr. Runciman expected here today?

Clerk of the Committee: As far as I know, he was supposed to come.

Mr. Chairman: What is the wish of the committee? We could stand it down further. No unanimous consent. Is Mr. Runciman aware this was coming on today? Did we defer this to a specific date?

Clerk of the Committee: No.

Mr. Hampton: I would merely ask if we could have a 10-minute recess, so that some attempt could be made to contact Mr. Runciman.

Interjection.

Mr. Chairman: Actually, if anybody was at fault, it was I. I should not have asked for the ruling in the absence of Mr. Runciman. I did not notice he was not here. He was not aware that it was coming. We could move on to the next item and, in the interim, one of you gentlemen or the clerk could try to locate him.

Why do we not move on to Mr. Philip's amendment on which I had to make a ruling? I will make my ruling and that will take at least 10 minutes. We all should have a copy of the ruling by now. It is coming around.

Just to refresh your memories, Mr. Philip had moved that the bill be amended by adding thereto the following section:

"6a(1) Upon the Legislative Assembly first sitting in 1990, a select committee of the assembly shall be appointed, to be known as the select committee on Sunday shopping, with authority to sit during the session of the Legislature.

"(2) The select committee on Sunday shopping shall consider the merits of the policy and objectives of this act and its effectiveness.

"(3) The select committee on Sunday shopping shall report its observations, opinions and recommendations to the Legislative Assembly not later than the second anniversary of the coming into force of this section.

"(4) If the select committee is not appointed or if it does not report to the Legislative Assembly under subsection 3, this act is repealed on the second anniversary of the coming into force of this section and the Retail Business Holidays Act shall be deemed to read as it did immediately before this section came into force."

I had some doubts about the regularity of this and whether the amendment was in order. I trust that Mr. Kormos and Mr. Hampton have Mr. Philip's blessing to receive the truly erudite decision that is about to be read. Is that correct?

Mr. Kormos: I just asked Mr. Hampton if, indeed, you wrote this.

Mr. Chairman: Of course I did. Deborah Deller is not here, so she cannot say anything to the contrary. I gather we have your permission.

Mr. Hampton: I just want to ask one further question. Did the articling student in your law firm write this?

Mr. Chairman: I have never had an articling student, nor do I ever intend to have one. I gather I have your permission, seeing nothing to the contrary.

Mr. Hampton: Since you have faced us with a written decision, it will not be lost to Mr. Philip.

Mr. Chairman: I will read it:

"Mr. Philip's amendment on section 6a"—it is three typewritten pages, come on.

"The amendment moved by Mr. Philip on December 6, 1988, is in order for the following reasons:

"(a) There was some discussion as to whether or not the amendment could be seen to be anticipatory and therefore out of order. May states in his treatise on Parliamentary Practice, 20th edition, that, 'A motion must not anticipate a matter already appointed for consideration by the House....' There is currently no bill or motion appearing on the Orders and Notices paper which this motion would anticipate.

"(b) The committee also heard argument that this amendment would have the effect of reversing the principle of the bill as contained in section 4. May states that an amendment is not in order if it 'is equivalent to a negative of the bill, or which would reverse the principle of the bill as agreed to on the second reading....' Since there is nothing in Mr. Philip's amendment that would prevent the passage of section 4 as it now appears, or in its amended form, it cannot be argued that the principle of the bill would be destroyed or negated.

"The concern appears to be with subsection 4 of this amendment, which would have the effect of repealing the legislation in 1990 if a select committee is not established. There are examples of legislation containing a clause which would cause it to be repealed at some future date. The Metropolitan Police Force Complaints Project Act, for example, contains in section 27 the provision for the act to be 'repealed on a day that is three years after it comes into force or on such day thereafter as is named by proclamation of the Lieutenant Governor.' A section in a bill causing the entire legislation to be repealed at some future date does not constitute a reversal of the principle of the bill.

"(c) On the question of the establishment of a legislative committee through legislation, I again must refer to precedent.

"In Ontario, the standing committee on regulations and private bills"—a committee that I know well—"was established by the Regulations Act. This act states in subsection 12(1) that, 'At the commencement of each session of the Legislature a standing committee of the assembly shall be appointed, to be known as the standing committee on regulations, with authority to sit during the session.' The act goes on to establish the function and reporting process of that committee.

"Since the amendment does not violate any of the rules discussed or any other parliamentary procedure, I rule the motion in order."



That is my ruling. We now have before us the motion that I just read to you. Are there any members who wish to speak to the motion?

Mr. Kormos: Mr. Philip specifically asked that he be here on this because there were some very special things he wanted to say about it. I know that he is attending another matter.

Mr. Chairman: Is it within the precincts?

Mr. Kormos: Oh, yes. Could we have a brief adjournment?

Mr. Chairman: Do we have unanimous consent to recess for five minutes?

Agreed to.

Mr. Chairman: We will recess actually until 4:30, just to be precise.

The committee recessed at 4:23 p.m.

1635

Mr. Chairman: We are back in session. You would like to address the motion.

Mr. Philip: I thank you for your patience, Mr. Chairman, and I apologize to members of the committee that I had to be in the House with the estimates of the Management Board of Cabinet, of which I am the critic. They were going on simultaneously with this committee.

Thank you for your decision, which has ruled that this motion is in order. If you look at what is happening in government reform in various jurisdictions, you see that what is happening is a serious look at a concept called sunseting. Sunseting is not there to save the taxpayers money by eliminating programs; it is there to ensure that programs or that legislation of various kinds is adequately reviewed to ensure that it has met the objectives of the original legislation, that it is being properly monitored, that evaluations are being done.

In many cases, there are revisions that actually improve it as a result of the sunseting clause. In other cases, rare as they may be, the particular legislation or program is discarded because it is fairly obvious that either its objectives have been met and therefore it is no longer necessary or that it is not meeting objectives and that there are better ways of doing things.

The government has argued that this is a piece of legislation which gives power to municipalities to make decisions regarding store hours, that it will not lead, as it has in British Columbia, to wide-open Sunday shopping and that it will not, as it has in British Columbia, have municipalities being forced because of adjoining municipalities to in fact open up the stores against the wishes of the people in those communities and against the wishes of their council. Through the coercion of seeing money flow across the border, they have to enact bylaws that will allow for Sunday shopping.

All this amendment does is say, "Okay, Solicitor General, we in the opposition," or we in this committee hopefully, if the government members vote for it, "accept you at your word." We're saying, "Okay we'll give you your chance. You are the government, you are enacting this legislation; all that we

want, though, is that after a period of time there should be an examination of it."

The opposition is saying that it is going to lead to a bunch of objectives that the government is saying will not happen. The government is presenting the opposite arguments. I say to the government members on the committee, if you really believe in this legislation, then you should have no objection to this.

Surely what this amendment does in setting up a select committee to review the legislation, if this legislation is as good as the government says it is, then in 1990—right around election time, as a matter of fact; probably just before an election—it would mean that a select committee would have to come out and say: "Yes, the legislation is working. Here are one or two changes, maybe a few changes, but by and all the legislation has proven itself."

I say to you that if you are a government member and you really believe in this legislation, you should have no objection. On the other hand, if you are really playing games with it, if you really do not believe that this legislation is as good as you say it is, if you really do not believe that it will meet the objectives you are claiming, then of course you would be afraid of this motion and you would vote against it.

1640

This amendment is a litmus test. If the government members really believe that this is good legislation, they should fear nothing by a review of the legislation in 1990.

If, on the other hand, they fear this legislation, they fear that the majority of the public that has come before us is right and that it is bad legislation; they fear that the small store owners are correct in what they are saying; they fear that the churches are correct in what they are saying; they fear that the various womens' groups are correct in what they are saying; they fear that the large chain store owners who are opposed to this legislation are correct in what they are saying; they fear that what the consumers' groups are saying is correct: that it will be inflationary on consumers' prices; they fear what the auto dealers are saying: that it will be inflationary on car prices; if they have those fears, well then of course they would not want this amendment.

If, on the other hand, they are right and all of these other people including the opposition are wrong; then they should welcome this amendment because it will be their opportunity in two years' time—in 1990, right close to an election—to have a committee that will say, "We told you so; admit now, members of the opposition, that you were wrong."

So in a democratic process, in a process that for monetary reasons has argued in different jurisdictions such as Australia and New South Wales, for example, which is building sunseting legislation into its various acts and regulations, a committee of this Legislature has dealt with the whole issue of sunseting and finds it particularly attractive, and I think more work will be done on the standing committee on regulations and private bills and the standing committee on public accounts. Some members have shown some interest in that as a possible way of making government more efficient.

The federal government in Australia is now introducing, I believe, a



seven-year sunset clause on legislation that will review whereby legislation will destroy itself after seven years unless it is reviewed and re-enacted to certain types of legislation.

What I am advocating in this motion is not terribly radical. It simply says: "Look, here we have a bill; there seems to be tremendous disagreement about this. We are dealing with something that affects people very deeply, not just their religious convictions but also their very style of life. People feel very strongly either for or against this legislation, as we have seen across the province. So it makes some sense to review it."

Indeed, the Ontario government itself has built sunset clauses into some of its bills already. Mr. Kanter will be aware of that. The Metropolitan police complaints review board had a sunset clause built into it. Why? Not for the efficiency reasons which I would argue are good reasons to build it into most legislation and most regulations, but simply because it was dealing with an issue that was controversial, that had various points of view on it and that had various predictions which were directly contrary depending on which person you received it from. Therefore, Roy McMurtry quite rightfully said, "We will build a sunset clause into that bill."

There are other bills; I can think in terms of Metro, as Mr. Kanter as alderman will be aware of the demolition bill which had a sunset clause built into it: Bill Pr13, that was re-enacted as a government bill, as I recall. The city of Toronto antidemolition bill had a sunset clause built into it.

All this is doing is that it is building in that same concept of sunseting. My argument basically is, if you have nothing to fear, if you think it is good legislation, why not vote for this amendment? It is not a radical, new idea. It is being done in other jurisdictions. It has been done in this jurisdiction, both under the Progressive Conservative government and under the Liberal government with different pieces of legislation. I have just mentioned two bills. So I urge members of the government in this committee to vote for this amendment.

Mr. Runciman: I would just make some brief comments in support of Mr. Philip's amendment. I share many of the views he has expressed with respect to the value of having sunset provisions in provincial legislation. I think it is something, as he indicated, with respect to what is happening in Australia. I think it is the sort of initiative that this government and all the governments within Canada should be taking a careful look at with respect to having some sort of sunset provision built into all legislation.

I am sure Mr. Philip, as chairman of the standing committee on public accounts and experienced in sitting as a member of that committee in years past, is aware that we find numerous instances where boards, agencies, commissions, what have you and, in specific legislation especially, programs are not really meeting the purpose that they were originally intended to meet. But for a lack of a review built into the system, they simply carry on and all of us, as taxpayers, suffer the added burden of that bureaucracy.

In this instance, consumers themselves and business people throughout this province could suffer as a result of the government not stepping back through a sunset provision and reviewing, indeed: "Has this legislation met the objectives that we hoped it would achieve when it was initially brought forward, or is it falling short? Is it, in effect, creating more problems than it has solved?" We certainly believe that is going to be the case.

I do not know if members of the official opposition have mentioned this at an earlier stage in today's deliberations, but I think how effective the current legislation was with respect to Boxing Day closings across this province is worthy of note. I know there were some problems in the Metropolitan Toronto area with people openly challenging the law, but I think if you take a look province-wide at the charges that were laid, etc., indeed the law that is currently on the books appears to have been extremely effective in curtailing retail operations on that particular holiday.

Again, I think it reiterates and reinforces the position that the opposition parties have taken throughout the course of deliberations on the government proposal with respect to changing the Sunday or pause day shopping laws in this province.

This may have been commented on at an earlier stage by the parliamentary assistant with respect to the government's views on this particular amendment, but I think it has considerable merit. I can see no real difficulty in the government's supporting this, but perhaps the parliamentary assistant will enlighten us if, indeed, it cannot see it within itself to give it the support that I think it deserves. I simply want to put on the record the support of our party with respect to Mr. Philip's initiative in this area. We think it is a very worthwhile amendment and one that is worthy of support by government members as well as the opposition parties.

Mr. Chairman: Do any other members wish to address Mr. Philip's amendment?

Mr. Kanter: I will rise to the request, if not challenge, of Mr. Runciman.

Mr. Ballinger: Leave the vitriol at home.

Mr. Runciman: That would be a change.

Mr. Kanter: No. I think both Mr. Philip and Mr. Runciman, to be fair, were concise and to the point on this issue, and I intend to be the same.

First, with respect to Mr. Runciman's comments on Boxing Day, I appreciate his sentiments. I think that, partly, it was due to a number of comments the Solicitor General (Mrs. Smith) made in the House and elsewhere as to the importance of obeying the law and, partly, it was due to the generally good corporate citizens we have in our business community. I appreciate the fact that the law was generally obeyed, although not invariably. I appreciate those comments.

1650

With respect to the sunset law concept, I have no difficulty with that. I do not think my colleagues have any difficulty with that. As Mr. Philip has pointed out, the Metropolitan Toronto Police Force Complaints Act and the Rental Housing Protection Act are designed to do a number of things—to force review, perhaps reduce unnecessary government intervention and perhaps bring about economic efficiency.

I have no particular problem with that, but I notice that this is a very peculiar and selective sort of sunset clause because it does not repeal this act after two years. Rather, it brings back the Retail Business Holidays Act, one on which there has been some consensus, some general agreement in this



committee. This committee has not been totally dominated by consensus. There have been differences from time to time, but I think that there has been some consensus that there are some problems with the existing legislation, not just with respect to Boxing Day and when it comes and whether stores should be closed on Boxing Day, but with other things—the level of fines, roping off and a number of other provisions.

I guess I would say to Mr. Philip that his motion, rather than being a true sunset bill which would eliminate the act wherein the act would self-destruct, is a very selective return to a current situation which many members of the committee at various times have said is not satisfactory in whole or in part. I want to make very clear my concern about his particular motion. It does not extend towards the concept of sunset laws.

There are a couple of other problems with the motion as it applies to this particular bill. One of them is its impact on municipal bylaws. There are now 100 or 125, whatever, municipal bylaws relating to Sunday store openings. Under our legislation there would continue to be some room for municipal options and municipal flexibility, should municipalities want to do that.

I am very unclear as to what would happen to those municipal bylaws if the legislation were repealed. Would the tourist exemptions, for example, remain in effect? Would the municipal bylaws that would be passed remain in effect? I think there would be some particular problems in this legislation if this motion were passed.

I think that we have had an extensive and an exhaustive review of this legislation. I have only been here a short time, but it has certainly been very, very extensive. We have spent 55 or 56 days on it to this point. We have spent time on second reading. We have spent time in committee hearings where the public could appear before us. We have spent a lot of time on clause-by-clause examination. I think this is the twentieth or the twenty-first day of a bill that has eight clauses. I think it has had long and hard examination by all members of the committee.

I note the list is beginning to get fairly extensive. On the government side we have moved five or six amendments of our own. In some cases they were supported by one or other of the opposition parties. We have accepted a number of opposition amendments proposed by both of the opposition parties.

I think the committee stage has had some considerable impact. I would point out to all members that whether or not there is a sunset provision, I would call this a very selective sunset provision. Maybe it is an eclipse or something like that, but I would point out to all members of the committee that in our parliamentary system it is always possible to review legislation. Parliament is sovereign. Parliament is supreme. The Legislature is supreme and we can always review this legislation at any appropriate time. That is, a sunset provision is not necessary in this case. I would argue it is not helpful. I would say that the committee process has been particularly complete and exhaustive.

It may be that in some cases like the Rental Housing Protection Act, which is one bill that I have some knowledge of as a municipal representative, it was something that was pressed for very hard with perhaps relatively little legislative examination. I would not say that has been the case here. We have had very extensive examination and I am quite confident that the bill will be a good one. Should there prove to be problems in the way it is carried out, it certainly can be reviewed by the Legislature any time. While I appreciate the

sentiments that have led Mr. Philip to move this amendment, I would urge members not to support it.

Mr. Philip: Mr. Kanter must not have read subsection 4 of this amendment very closely. Otherwise he would not say that this amendment simply reverts to the old legislation after two years. The purpose of the amendment is fairly clear. It says that the bill, the present legislation will be examined by a select committee.

"Upon the Legislative Assembly first sitting in 1990, a select committee of the Assembly shall be appointed, to be known as the select committee on Sunday shopping, with authority to sit during the session of the Legislature," and "The select committee on Sunday shopping shall consider the merits of the policy and objectives of this Act," not of the original act but of this act.

The only way in which this amendment would revert to the old act would be if the government did not follow the wish of this amendment and did not set up the select committee. One would assume that if the legislation is as good as Mr. Kanter tries to say it is, the government would have no reason not to have a select committee to examine its good legislation.

Mr. Chiarelli: Why not put 1992, Ed?

Mr. Philip: The reason I suggested 1990 was that I thought two years would be a good time. If it is as good as the Liberals and as you, Mr. Chiarelli, say it is, you would have no objection to an examination just before an election.

Mr. Chiarelli: Oh, I was not thinking of that. I was just thinking that maybe we would need more time to see if it worked.

Mr. Philip: If you are willing to accept 1992 and vote for the amendment, I suggest that you move it and we will consider that.

Mr. Kanter likes to have it both ways. He says that he believes in sunseting and he says that this is good legislation. If you believe in sunseting and if you believe that this is good legislation, you should have no objection to having a sunseting clause in this legislation which is not even as strong as some sunseting legislation that says that a bill will automatically be destroyed.

What this does is say that if by any chance the government does not go ahead with setting up the committee, rather than have nothing in place, at least the original act would be in place until such time as the government could see fit to take some action. It is simply a protection, that some legislation would be in place. It is not even as strong a sunseting provision as that which Mr. Kanter says he is in favour of in other legislation that has been introduced by both his government and by the previous Conservative government, particularly by Mr. McMurtry.

The other argument that Mr. Kanter seems to be making is that somehow, because there has been tremendous examination of this, it does not require further examination two years down the road. There has been tremendous examination of it. There has been a tremendous number of people who have said things that are quite contradictory to what other people have said, admittedly in a ratio of 24 to 1, but 24 of those various groups, delegations have said that there are going to be disastrous effects from this. The other one out of every 24 has said, along with the Solicitor General and Mr. Kanter: "Oh,



you're just pipe-dreaming. Nothing is going to happen. It's not going to be bad at all."

This is an opportunity, in a very controversial piece of legislation, to at least have a review after two years. I say to you, Mr. Kanter, you cannot have it both ways. If you are not afraid of this legislation, you have nothing to lose; if you are afraid of it, I suppose you have to vote against it. There is no other reason for voting against this. If this legislation is so good, you would want an opportunity for a committee to come out and say, "Yes, we agree that there may be a problem here, a problem there, but by and large the legislation is working."

If it is as good as you say it is, if you are right and a majority of the population in Ontario, as the polls show, is wrong, if you are right and the majority of groups that came before us are wrong, if you are right and the opposition is wrong, if you have any guts in your convictions—you would want this opportunity then to prove that you are right. All I am saying through you, Mr. Chairman, to Mr. Kanter, in the most delicate way possible, is that if you have any conviction in this legislation then you want to vote for this amendment.

If you do not have conviction, if you are just game-playing, if you are just trying to protect the backside of the Solicitor General—and lord only knows during the last couple of weeks she has needed somebody to protect her—if not from our members, at least from the former Solicitor General, then at least vote for it.

1700

Mr. Chiarelli: If you have any guts, you will let the people decide in 1991.

Mr. Chairman: Are there any further members who wish to speak to the matter?

Mr. Chiarelli: Why do you not let the people decide in 1991?

Mr. Philip: They will, but you will be disappointed with the results.

Mr. Kormos: That really is a peculiar comment from Mr. Chiarelli, about letting—

Mr. Runciman: He is always making peculiar remarks.

Mr. Chairman: We are actually trying to cut down on costs here and not make Hansard have to add so many of these interjections to the record.

Mr. Kormos: I am sorry. I did not make the interjection. Mr. Chiarelli made the interjection more than once.

Mr. Chairman: I did not hear him.

Mr. Kormos: I did. I heard him clearly, more than once, talking about letting the people decide. Mr. Philip referred to the number of representations made to this committee when it was doing its road show, and even subsequently.

Mr. Runciman: Let's have a referendum.

Mr. Kormos: If that was not a demonstration of what people have decided, then surely the timing contained in this particular amendment is an opportunity to let the people decide. It is exactly what Mr. Philip is talking about. It was Mr. Chiarelli and others who expressed some dismay or some concern about the timing, that is to say in 1990, and they were invited to make amendments to change it to 1992.

The comment was made in response to Mr. Runciman, about this not being an absolute or a 100 per cent sunset law. Well, it remains that what it does is revert to the status quo. Now mind you, the legislation that is proposed in the amendment is distinctly different from the status quo, because the status quo is oriented towards ensuring closures and basically the status quo is Sunday closing legislation by and large, whereas the amendment is by and large Sunday opening legislation.

The design or thrust of the amendment is to permit Sunday opening, not to enforce Sunday closing. The impetus for the legislation came from those whose interests are best served by Sunday opening: those corporations by and large, in the community, for whom Sunday opening would be profitable. It was not designed to generate Sunday closing or guarantee Sunday closing. It was designed to provide a vehicle or a means whereby there could be Sunday opening—more and more and more of it—and indeed along with that, Sunday working. So really, to revert back to the status quo is not in any sense any sort of violation of the principle of a sunset clause or sunset law, as Mr. Philip expressed it.

Now what is interesting is that there was also a comment made about the status quo's perhaps being somewhat ineffective in terms of enforceability, with particular reference to the penalties that were imposed. That is a particularly interesting comment because the source of those types of comments was the very same person, among others, who voted against the recent amendment that would have provided for healthier and stronger penalties in the existing legislation, that would have indeed provided the enforceability that is absent now and would have provided an enforceability, by the way, during this Christmas season, which I specifically recall Mr. Kanter carrying on about just before there was the break for Christmastime.

Mr. Philip points out that if the government is not afraid of the legislation it would welcome this type of review. One gets the impression almost of a little bit of three-card monte here because one suspects that with the apparent sincerity displayed in the presentation of this legislation—I am talking about the whining and carrying on about the unenforceability and the lack of teeth in the Retail Business Holidays Act as it stands now—that the purpose in enacting this legislation is always to provide those teeth, to provide that enforceability. Once again, the government walked away from that opportunity when it voted against the bill that would have given teeth to the existing legislation so it would have been available for this particular Christmas season.

Two, we all know, the whole province knows this legislation, this amendment, the purpose of it, the thrust of it, because take a look at where the teeth came from. The teeth came from amendments made by opposition members not inherent —

Mr. Sola: And accepted by the government.

Mr. Kormos: I am sorry, I did not hear that.



Mr. Philip: Mr. Sola said that they were accepted by the government, a few of them.

Mr. Kormos: Did he say "excepted" or "accepted"?

Mr. Sola: If they were excepted, they would not be part of the legislation.

Mr. Kormos: They were not an initial part of the legislation.

Mr. Chairman: Let's go back to sunseting.

Mr. Kormos: That is right. Let's go back to it. They were not a part of the bill as proposed by the government. The government had no intentions of—

Mr. Sola: That is why we had the hearings.

Mr. Kormos: I am sorry. I heard something again.

Mr. Chairman: Just carry on.

Mr. Kormos: Thank you. The government had no intention of incorporating that type of penalty in its initial bill because it understood the thrust of its initial bill to be to permit Sunday openings, to permit Sunday working, not to prohibit openings and to prohibit work. It is only a part of the little bit of three-card monte that would have persuaded government members to have accepted the amendments made by opposition members during the course of this committee hearing. It was probably not, as a matter of fact, accepted without any great deal of hesitation because it would expect that, once again, the legislation is primarily permissive in that it permits openings and permits exemptions rather than being prohibitive.

The consideration of a committee discussing and considering both the policy and objectives of the act—now, mind you, that in itself would be good reason for Mr. Kanter to not want this because if it were to discuss and consider the merits of the policy and objectives of the act, I would suspect that it would, upon reflection, all the more readily come to the conclusion that this legislation is, once again, real lipservice to the plaza owners and other interests which would want to make money out of other people having to work on Sunday.

That would have been his motivation. The legislation was not motivated by wanting to delegate legislative responsibility, although it has been asked, "My goodness how can the same thing be good for Niagara Falls as is good for Sudbury?" If that is the case, one would expect the government to start suggesting that, perhaps, liquor licence legislation ought to be delegated to the municipality because surely—

Mr. Chairman: I think you are drifting off.

Mr. Kormos: No, I am not. Because surely—

Mr. Ballinger: Certainly not in your own mind, you are not.

Mr. Chairman: Go ahead. Bring us back to sunseting.

Mr. Kormos: Because surely, my goodness, whatever—

Mr. Ballinger: Too much turkey, I am sure.

Mr. Philip: I would like to see Mr. Ballinger when he is sunsetted.

Mr. Chairman: Go ahead.

Mr. Kormos: Thank you.

Mr. Philip: I would even pay for it.

Mr. Chairman: Tit for tat here. Mr. Philip will refrain from interjections, as will Mr. Ballinger.

Mr. Ballinger: If Mr. Philip wants to pay for anything, I am glad to quote it in Hansard for him.

Mr. Chairman: Refrain, I said.

Mr. Philip: If you are prepared to drink whatever I pay for.

Mr. Chairman: Go ahead, Mr. Kormos.

Mr. Philip: With the exception of bourbon.

1710

Mr. Chairman: Your private life you can discuss at a later stage. Go ahead.

Mr. Kormos: Is there a Canadian bourbon?

Mr. Philip: Yes, there is, in Alberta. Now I have added to the education of the Niagara area on bourbon.

Mr. Kormos: —because surely what is good for Niagara Falls is not necessarily good for Sudbury when it comes down to the time to stop serving liquor, the time that taverns have to close—Niagara Falls being a border city and basing a large part of its economy on that type of entertainment and that type of service industry—and of course, tourism.

That is a part of the policy and the objectives of the act that would have to be considered by a committee, as I am sure Mr. Philip contemplates.

Mr. Chairman: I would like to bring you back to the sunset clause, Mr. Kormos. The way you are interpreting it you could literally go through the entire argument over again, and you are not within the framework of the amendment. I am going to call you to order and ask you to come back to addressing the merits. I presume that you are in favour of Mr. Philip's amendment.

Mr. Kormos: I am discussing subsection 6a(2) of the amendment now.

Mr. Chairman: I am going to say that you have gone too far afield.

Mr. Kormos: I am sorry, I was talking about subsection 6a(2): "The select committee on Sunday shopping shall consider the merits of the policy and objectives of this act..." and I was wondering, as part of my comment in response to Mr. Kanter, if that is what Mr. Kanter would be reluctant to have



the committee do. That is why I am discussing the sort of things that I am talking about.

Mr. Chairman: We have heard some of the examples, but I would like to get you back to the question of the amendment.

Mr. Kormos: Of course the committee would consider the effectiveness of the legislation. Once again, that would be more like the emperor with no clothes, because it would be a matter of legislation effective at enforcing Sunday closing and enforcing the right to a common pause day. On the contrary, the legislation may well demonstrate itself to have been effective in permitting wide-open Sunday shopping and wide-open Sunday working. If that is the case, then it warrants review by a select committee.

If it is the case that this is something more on the part of the government than three-card monte, then as Mr. Philip repeated during the course of his comment several times, the government has absolutely nothing to be fearful of short of recognizing really what the effectiveness of the legislation is, which would be to encourage Sunday opening and Sunday working. If the government wants to make apparent now its motive for enacting the amendment, so be it; but it wants to appear to operate under the guise of really believing in the thrust of the old legislation, but merely improve upon its enforceability.

The type of review contemplated by this amendment—by this section 6a—would be welcome, and indeed would perhaps make the whole package somewhat more palatable to the community because it would be assured of fairly early perusal of the net effect of all this sort of thing. Undoubtedly, for communities which do not have anywhere in the legislation any great number of guidelines as to what ought to be considered in the course of considering municipal bylaws providing exemptions, there is going to be a real not just quiltwork, but as so many submissions have commented on, dominoing. There is going to be succumbing, because the minute one municipality thinks it is being wise or cautious in providing somewhat limited exemptions and its neighbour provides more far-reaching or broader exemptions, then it will revert back to municipality one, which will have to then expand upon the exemptions that it may have wisely or at least cautiously incorporated—or at least with restraint—and follow suit.

If the government really is not interested in wide-open Sunday shopping, wide-open Sunday working, then this type of review would be welcome. It would see this type of amendment to the bill as being not just desirable but virtually necessary.

I, of course, support the amendment, and I cannot see how or why anybody would oppose it. As I have said, if the timing is bad, there has already been the comment made, "Let the people decide." So be it. Otherwise, as Mr. Philip has suggested, an amendment to the date that is there, 1990, would be appropriate.

Mr. Chairman: Any other members? Mr. Chiarelli.

Mr. Chiarelli: I would like to address some questions to Mr. Spring regarding some of the legal implications if this amendment were to be adopted and it were to take effect in one of the ways contemplated by subsection 4. In particular, Mr. Kormos indicated that he could not see why anyone might object to this motion. I would like to direct a series of questions to Mr. Spring.

I am going to give you the points together and perhaps you can make a note of them and deal with them one by one. I know there is an element of unfairness in asking you to comment on short order on some of the things that I am going to put to you, but by putting them to you, I am merely raising some of the concerns that one might have with a motion of this type, which appears to be quite simple, short and to the point but could lead us into a real legal and practical morass. In particular, I think Mr. Kormos, as a former practising lawyer, perhaps should have had some of these things under consideration when the motion was put.

First of all, what possible practical and legal effect might this have on collective agreements which will be negotiated over the course of the next two years, contemplating many of the factors and realities of the existing legislation if, holus-bolus, it were automatically to cease, as contemplated, as one of the options under subsection 4, simply saying that the Retail Business Holidays Act shall be deemed to read as it did immediately before this section came into force? That might take place in the context of all kinds of collective agreements negotiated in the interim. That is number one.

Second, the status of bylaws that may have been passed by municipalities would simply, reverting to the old law, automatically de-legislate all those bylaws which had been enacted in municipalities. What would be the effect of that?

What about lease provisions which may have been negotiated with respect to some of the provisions or which may be imposed by this legislation? What could the possible instantaneous cessation of the bill do to these leases?

There are some very technical points. For example, what if there were a surviving injunction against a pharmacy of 15,000 square feet? Would the effect of subsection 4 override the injunction or would someone have to apply to the court and get the court to override its own injunction? What about the case where someone has been convicted under the existing legislation but has not yet been sentenced? Will the conviction be overturned because the sentence has not taken place? These are all technical points which perhaps have been contemplated by the mover of the motion and the persons who are supporting it, but I see them as very problematic. Quite frankly, I see this motion as being one of shooting from the hip and shooting from the lip. Like many other motions that have been made by the opposition, I think it is ill-thought-out and loose-headed.

Mr. Chairman: Are you really seeking a legal opinion from Mr. Spring as to the outcome of all those incidents?

Mr. Chiarelli: Perhaps he can generally respond as to whether or not there might be some legal problems with this reversion.

Mr. Philip: I'm glad Mr. Chiarelli asked those questions. I would appreciate a response.

Mr. Chairman: I thought they were rhetorical.

Mr. Philip: I take them as direct questions and I would ask Mr. Spring to answer each and every one of those questions.

Mr. Chairman: Mr. Spring, do you choose to answer those questions?

Mr. Spring: Help or m'aider. I will attempt to answer the questions



that I think I can answer at the moment. I am not going to risk offering an unresearched legal opinion on these questions which, as Mr. Chiarelli has acknowledged—

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Mr. Chiarelli: Which the opposition has done by moving the motion.

Mr. Chairman: Mr. Chiarelli, I think that puts Mr. Spring in a difficult position. Mr. Philip, I think that that is not fair to the staff.

Mr. Spring: I do not mind answering their one question—

Mr. Chiarelli: If this motion is moved as a serious motion, which I believe it is, by Mr. Philip, then I am asking these questions in a serious vein. We have here, if this motion were to be adopted, a section that says that "the Retail Business Holidays Act shall be deemed to read as it did immediately before this section came into force." I have raised a number of circumstances that might exist at the time when that provision might take effect.

I think that this committee is entitled to know legally and technically what the implications might be, and not by some uneducated opinion from someone who is moving a motion that happens to read the "first sitting in 1990" to coincide on the eve of the next election, which is very cute, but I think we had better get serious about what we are doing. We are trying to write a serious bill and I think my questions are put in a very serious vein.

Mr. Chairman: What I am going to do, and I think this is the fair way to handle it, is ask Mr. Spring to answer those questions that he feels do not perhaps overstep his position as a member of the civil service. Mr. Spring, you answer the ones you feel comfortable in answering.

Mr. Spring: The only one of these five questions that I have really looked at to any extent deals with the status of bylaws passed by municipalities pursuant to Bill 113. It is my view and it is shared by my colleagues' officials in the Ministry of Municipal Affairs that to the extent that any of those bylaws that were passed under Bill 113 were inconsistent with the bylaw-making power set out in the previous legislation, to the extent that they could not be justified as tourism bylaws, they might very well fall with the repeal of Bill 113. I cannot say that all bylaws would fall. It is my opinion at the moment that those bylaws which were clearly not of a tourism nature, however that may be determined, would probably fall with the repeal of Bill 113.

With respect to the other four questions that have been raised, those are questions which, as Mr. Chiarelli has pointed out, are technical. They are complicated with respect to the legal effect of the repeal of Bill 113 on collective agreements. It would depend upon the nature of the provision impugned by the repeal. I cannot speculate at the moment. If I were given an example, I would like to have the matter researched.

Similarly, with lease provisions imposed in contemplation of Bill 113, I would make the same comments as I would with respect to surviving injunctions and the case of an accused person who has been convicted under the legislation and not yet sentenced, although about the latter I would say that if the conviction were sustained under a provision of the act that had existed in the Retail Business Holidays Act prior to Bill 113 for reasons recognized as a

breach of that legislation, I would assume that the conviction would be upheld, although in my view—and, once again, legislative counsel and I have not had an opportunity to discuss this—the person would probably be entitled to the smaller maximum set out in the previous bill than he or she or it would under the heavier sentencing provisions of Bill 113.

Except with respect to answers I may offer to further questions, I believe those are all the comments I would like to make with respect to those questions at this time. There is too much there to offer an off-the-cuff, not to say off-the-wall, opinion at the moment.

Mr. Philip: In response to the answer to the first question, it is fairly clear that my intention in drafting subsection 4 was to do precisely that, namely, if the select committee were not set up, you would revert to the original act rather than have nothing there as a clear-cut sunset provision provided for you. Therefore, any bylaws that were contrary to the old act would destruct with the sunset provision. That is fairly clear. There is no argument about that. But it takes place only if the government does not see fit to set up the select committee as is provided for and as is instructed for under subsections 1, 2, and 3.

Let me say also that it is my intention, as I have every right to do, to ask that there be a vote on each subsection of the amendment, if it is Mr. Chiarelli's worry that somehow subsection 4 is offensive to him—

Mr. Chiarelli: Don't worry; I'll vote against them all.

Mr. Philip: If, as Mr. Kanter has argued, it is that one subsection re-enacting the old act in the event the select committee is not set up that is that is offensive to him, then of course he can vote for subsections 1, 2 and 3, knowing he has the numbers to defeat subsection 4.

Mr. Chairman: Mr. Philip, I would like to take that under advisement. I would have some concern whether you could do that, because your amendment really reads, "I move that the bill be amended by adding thereto the following section." You have been talking about a subsection; you are really dealing with a section.

Mr. Philip: The amendment is in four subsections. You have the right, and you can check with the clerk if you would like to get advice, to vote on each of the subsections.

Mr. Chairman: I do not think that is correct. I think you have amended it by—

Mr. Ballinger: You have to move them independently.

Mr. Chairman: Just a second. You have amended it "by adding thereto the following section," and 1, 2, 3 and 4 are simply subsections of the section. If you had amended it "by adding the following sections," I would agree with you, because they would all stand independently, but because you have moved it the way you have, they are all dependent in some respect on the others. If you were to vote independently on them, you might have the result—I doubt that would be the case—where 1 would pass, 2 and 3 would be defeated and 4 would pass. You would have nothing.

Mr. Philip: That is done all the time.



Mr. Chairman: I am going to check, but that is my initial, gut reaction. I am just going to check.

I am advised by the clerk that the only way you could do that would be if there were an amendment to the amendment to strike out subsection 4, in which case the section would then read subsections 1, 2 and 3.

Mr. Philip: There is another way of doing it. I could simply—

Mr. Chairman: You could withdraw the entire motion and introduce two separate motions.

Mr. Philip: Or I can introduce four separate motions and let the members of the committee vote on each of the four separate motions.

Mr. Chairman: As far as the way you have suggested it is concerned, I am ruling that my initial inkling was that it would be out of order.

Mr. Philip: How about this, then? Supposing I amend it—I ask the clerk's advice on this—by adding "s" to the word "section" and 6a(1), 6a(2) and then you have separate amendments all the way down.

Clerk of the Committee: You have to introduce it as four separate amendments, if you want it voted on separately.

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Mr. Philip: Is it the wish of the committee then that we—you know the intent of each of the subsections. I am saying I want a separate vote on each of them. I can withdraw it, in which case you are going to be back here again with four separate amendments, or if you can accept the intention of each of these as being separate, we can have a vote on them separately and the drafting can be worked on later, which would mean that you would deal with this amendment or amendments before six o'clock tonight instead of having them carried over to the next—

Mr. Kanter: Is that a solemn undertaking, Mr. Philip?

Mr. Chairman: You can obviously do anything you like by unanimous consent. My purpose here is to rule on whether I think what you are doing is in order or out of order, and that is all I have done.

Mr. Philip: I am just asking Mr. Kanter if he accepts the intent of what I am trying to do—to help him and his members vote separately—to deal with some of their concerns. If they are not afraid of a select committee to review it, but are objecting to subsection 4, let's vote on it separately. Since you know what the intent is, I can either withdraw it and redraft the whole thing, which is going to take more time, and the redrafting will have the exact same words except that it will be in four separate amendments, or you can accept that I am not going to change any of the words and we will vote on them separately.

Mr. Chairman: Do we have unanimous consent?

Mr. Kanter: On the clear understanding that this item will be dealt with today, I would give consent to proceed as if Mr. Philip had introduced

four separate amendments and that we vote on them separately, if that is the procedure that is acceptable to the clerk and the chair.

Mr. Chairman: We need Mr. Runciman as well to have unanimous consent.

Mr. Runciman: On a point of clarification, Mr. Chairman: I would like to know what the parliamentary assistant means by "be dealt with today." Does he mean finalized?

Mr. Kanter: Being voted on today.

Mr. Runciman: I am not prepared to agree to that.

Mr. Chairman: There is no unanimous consent, so my ruling would be that as it presently stands—I am sorry to do this, guys and gals and all those others—you cannot do it.

Mr. Philip: All right. Can we agree that we will not have to have a republishing of the amendments and that I will simply do each of them verbally?

Mr. Chiarelli: It is a moot point.

Mr. Philip: I suggest, Mr. Chiarelli, that you consult with Mr. Kanter before you put your foot in your mouth again.

Mr. Chairman: Let us not have back and forth.

Mr. Chiarelli: He always tries to get personal whenever someone makes a good debating point.

Interjections.

Mr. Chairman: We may be in recess very shortly. Mr. Chiarelli, Mr. Runciman is the one I think you would be asking that question to, because Mr. Runciman has indicated he does not wish to give unanimous consent to the previous way to do it, but he may wish to—

Mr. Philip: I think Mr. Runciman is a very co-operative fellow. He is a former chairman of the standing committee on public accounts and therefore understands the value of sunseting. What we are trying to do is deal with the concepts and deal with them in a way in which people can clearly show on the record what they are in favour of and what they are opposed to and not waste a lot of time.

Mr. Chairman: Could I get it clear? You had consent from the government to allow you to treat this, Mr. Philip, as though it were individual motions. Mr. Runciman was not satisfied that it be done on the condition Mr. Kanter attached to it. You are now asking a different thing, I think. You are asking that it not be necessary to republish this and now you may want to ask Mr. Runciman if you can get his consent and then go back to Mr. Kanter and see whether or not we have unanimous consent.

Mr. Philip: That is fine.

Mr. Runciman: I have no difficulty with that. I would like to speak to the comment Mr. Kanter made, though. I have great difficulty with this kind of tradeoff whereby we are effectively cutting off debate in respect to this important matter. Certainly I believe Mrs. Cunningham would have some views on



it that she would wish to express. We are at this late hour now. It seems to me quite likely that the debate on this matter is going to extend into next week's deliberations. I think she would then have an opportunity to have input and I would not want to rob her, if you will, of that opportunity.

I simply do not like the idea of agreeing to this kind of closure motion in a not-so-subtle way in respect to saying: "Look, we're prepared. We think you may be right, but to go along with something that may be right, we want you to agree to closing off further debate and getting this behind us." I do not think that is an appropriate way to proceed.

Mr. Chairman: Actually, it was in response to Mr. Philip's request that Mr. Kanter do that.

Mr. Runciman: I appreciate that, but I do not appreciate the way Mr. Kanter has agreed to be supportive of Mr. Philip's request. It is kind of a blackmail effort, with all due respect, Mr. Chairman, and I do not think that is an appropriate way to deal with it.

Indeed, we may have got through it in just the way Mr. Kanter was suggesting. What offended me was the way he approached it. I think it should have been dealt with. If indeed Mr. Philip's proposal has merit, and I think it does, we should have simply gone ahead and dealt with it and might have finalized deliberations on it.

But the fact he has to come through with this continual kind of effort to pressure opposition members into moving along as quickly as he would like to see us move along without giving due deliberation to all the implications of these various amendments that are before us I think is a completely inappropriate way to proceed. I really took issue with it and that is essentially my reason for not being willing to go along with unanimous consent.

Mr. Philip: The only reason I was trying to be co-operative with Mr. Kanter, and I do not think I gave in to blackmail or anything else, was that--

Mr. Chairman: Mr. Philip, I do not want to cut this off, but we do not have unanimous consent.

Mr. Philip: If I may explain, though, for a second, what I considered was that the debate had been held, that I had made my points, that Mr. Kanter had made his, that Mr. Chiarelli and anyone else who wanted to speak on this committee had, and that I thought it probably would be dealt with by six. In fact, I thought it would have been dealt with by 5:30.

Mr. Runciman: Probably would have been except for the interjections.

Mr. Philip: If we do not have unanimous consent, can we have a recess for five minutes? We will redraft it in a way that members can deal with it. I am sure I can have this redrafted in five minutes.

Mr. Chairman: I wonder if, in the interest of time you can have that redrafted, and in the meantime we can go back to Mr. Spring giving an explanation to Mr. Runciman, which was already done. Mr. Runciman could not be here, so we will have Mr. Spring do that again. Perhaps while that is happening, Mr. Philip could arrange to have the motion drafted in the appropriate way. Mr. Spring, would you indicate again what you did earlier?

Mr. Spring: Sure. In the same words or a different version thereof?

Mr. Chairman: If you want to run it backwards, we will—no, I think in fairness it should be done.

Mr. Spring: As I recall, the question that was put to me through the chair on the second-last occasion on which the committee met was whether there were any statements of the court on the rationale of the recent decision of the Court of Appeal between Philip Zylberberg, the applicant, and the director of education of the Sudbury Board of Education, the respondent, whether there was anything in that decision that would impugn the constitutional validity of section 5 of the new act as proposed in section 4 of Bill 113—the Sabbatarian exemption, if you will.

My conclusion was that I thought there was nothing in that decision that would lend itself, substantially at least, to the argument that section 5 would be constitutionally invalid.

Just briefly to rehearse and recite the facts, this is a recent decision of the Ontario Court of Appeal. The question was whether a section of the regulations made under the Education Act infringed the freedom of religion and conscience guaranteed by paragraph 2(a) of the Charter of Rights and Freedoms. That was the regulation, subsection 28(1), entitled "Religious Exercises and Religious Education in the Public Schools."

The subsection reads as follows, "A public school shall be opened or closed each school day with religious exercises consisting of the reading of the scriptures or other suitable readings and the repeating of the Lord's prayer or other suitable prayers."

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There is also a section in the legislation that says no pupil in a public school shall be required to take part in any religious exercises or be subject to any instruction or religious education where his parent, or where the pupil is an adult, the pupil, applies to the principal of the school that the pupil attends for exemption of the pupil therefrom.

The court found that the section did in fact infringe on freedom of religion. In so holding, the Court of Appeal said, "It can no longer be assumed that Christian practices are acceptable to the whole community," and held that while there was a right to claim an exemption from religious exercise prescribed under the regulation, that right really exerted an unacceptable pressure or compulsion to make an election in the sensitive setting of a public school in the atmosphere of peer pressure and classroom norms in which children are acutely sensitive.

The court noted that subsection 28(1) makes it possible for the board to prescribe Christian religious exercises and noted that the effect of the exemption provision here was held to discriminate against religious minorities. The court saw this in the context of a challenge to a regulation which, on its face, violated the charter by discriminating.

The court went on to say, "On its face, section 28(1) infringes the freedom of conscience and religion guaranteed by section 2(a) of the charter." It went on to say: "Section 28(1) is antithetical to the charter objective of promoting freedom of conscience and religion. The recitation of the Lord's prayer which is a Christian prayer and the reading of scriptures from the



Christian Bible imposed Christian observances upon non-Christian pupils and religious observances on nonbelievers."

In the case of section 5 of the Retail Business Holidays Act, as proposed by section 4 of Bill 113, it is my view and I would submit that the thrust of this particular section is to ensure religious freedom by allowing retailers to practise their religion on days other than Sunday and to suffer no economic disadvantage by doing so, by opening on Sunday in lieu of their religious day.

As members of the committee will recall, the second-last time the committee met last December, Mr. Revell, the senior legislative counsel, suggested that the difference in the two cases is that one involves a challenge to legislation that cuts down or infringes upon the freedom of religion—I refer here to the Zylberberg case—while the other, the amendment before us, really seeks to ensure that freedom of religion.

The courts have held, and the court noted in this particular case, that it is the purpose of the legislation that must be looked to in deciding its true character. In this context, the court did say that the Edwards Books case in the Supreme Court of Canada held that the Retail Business Holidays Act that prescribed Sunday as a holiday for retail stores was not religiously motivated, but was enacted for the secular purpose of providing uniform holidays for retail workers. Although it infringed the religious freedoms of members of minority religions whose sabbath was on a day other than Sunday, it was held to be justifiable under section 1 and its validity under the charter was upheld.

As I mentioned previously, this particular amendment set out in section 5 of the act, as proposed in section 4 of the bill, is wider in scope than that currently set out in the Retail Business Holidays Act. As such, I would argue that it would be of further assistance even than the section currently in effect in promoting the constitutional validity of the bill.

I think those are all the comments I had made previously. I just reiterate that while there may be statements in the decision itself which, taken out of context or taken in part, may appear not necessarily to impugn the validity of the legislation but to raise some questions, the decision as a whole, I believe, supports the bill in its present form.

I do not believe that the rationale of this case, the essential reason for the decision in this case, in any way can be used to argue that section 5 of the act as proposed in section 4 of the bill is of doubtful constitutional validity.

Mr. Chairman: Thank you, Mr. Spring. Mr. Runciman, any further questions?

Mr. Runciman: I must admit I did not bring my section file dealing with that, Mr. Chairman, but Mr. Spring mentioned that Mr. Reville had reported back to the committee. That was a detailed response because I recall vaguely that there were two aspects of this, and Mr. Reville had taken it upon himself to do some investigatory work and report back to the committee.

I know when I met him in the hallway shortly thereafter, he indicated that he did have a report prepared to submit to the committee in respect to the questions that arose. To be quite honest with you, I cannot recall the specifics of the request or the ball that was thrown into his court, but I

think that that certainly took place during this question in respect to the Sabbatarian exemption.

I know that there was an element that Mr. Spring was going to get back to us on and another element that Mr. Reville was going to respond to and then open it up for questions. I am just wondering if that has taken place. I am getting a couple of indications that it has not.

Mr. Chairman: We will check here. Was there an additional item?

Clerk of the Committee: What I have is that it was stood down pending some information to be provided by Mr. Spring.

Mr. Chairman: The clerk has in her notes that it was stood down pending explanation by Mr. Spring; nothing about Mr. Reville.

Mr. Runciman: I think if you check Hansard, Mr. Chairman, you will find there was a clear commitment by Mr. Reville; in fact, it was reaffirmed, when I bumped into him in the hall two days later, that he had indeed done the necessary homework.

Mr. Chairman: Well, rather than check 55 or whatever days of Hansard, maybe we could have Mr. Reville's comments on that if they are appropriate.

Clerk of the Committee: He is not here.

Mr. Chairman: When will he be here?

Clerk of the Committee: Lucinda Mifsud is here.

Mr. Chairman: Cindy is here. What does the committee want to do?

Mr. Runciman: I am operating from memory here and I am not sure how significant the concerns that were expressed during the discussion on that date were. I would like to have the opportunity to take a look at Hansard myself if Mr. Reville is not available and will not be available next week. Or will he?

Ms. Mifsud: He will be available at the next committee meeting. He would have been available today. He did not inform me that his presence was required.

Mr. Runciman: He probably forgot about it, as I did.

Ms. Mifsud: I will certainly remind him and he can certainly be here next week.

Mr. Runciman: I think it would be inappropriate to vote on this particular section until we do have the input of counsel. It certainly was a request and the commitment was made. At this stage I cannot recollect the importance of that input, but it is appropriate that we review Hansard and ask Mr. Reville to be here next week to deal with it.

Mr. Chiarelli: I do not have any recollection that we were expecting or we had requested any further advice from anybody other than Mr. Spring. My understanding is that this particular matter has been deferred now on a couple of occasions. On a number of occasions the committee hearings had been



adjourned to accommodate Mr. Runciman's interest in this matter, and I would certainly not concur in deferring this matter further if unanimous consent is in fact required.

Mr. Chairman: I am not sure that that is what we would be doing. Are you perhaps moving the deferral of this item, Mr. Runciman? Standing the item down?

Mr. Chiarelli: Unless somebody else can corroborate any recollection that further advice was required other than from Mr. Spring, I have no recollection of that.

Mr. Runciman: Mr. Chairman, I will if that is what Mr. Chiarelli is forcing me to do. I will move that it be stood down until Monday of next week and be dealt with as a first order of business and that Mr. Reville be requested to appear before the committee at that time.

Mr. Chairman: Is that a request for unanimous consent to that or is that in the form of a motion?

Clerk of the Committee: It is in the form of a motion.

Mr. Chairman: It is in the form of a motion, I presume.

Mr. Runciman: I guess if unanimous consent is not forthcoming, it will have to be in the form of a motion.

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Mr. Philip: I think we have unanimous consent.

Mr. Chiarelli: I do not agree.

Mr. Chairman: We do not have unanimous consent then, I take it. I will take it in the form of a motion, which I presume we will need to have in writing.

Clerk of the Committee: No.

Mr. Chairman: All right, we do not need it in writing. Those in favour?

Mr. Runciman: Mr. Chairman, I will have to ask for the time under the rules to try to get Mrs. Cunningham to attend.

Mr. Chairman: All right. It has been requested. You have up to 20 minutes to secure members. We stand in recess until either six of the clock or until the gathering of the members.

Mr. Ballinger: I like the second part.

Mr. Chairman: If it is the six of the clock, we will then stand adjourned.

Mr. Chiarelli: I will give unanimous consent.

Mr. Chairman: I see. We seem to have unanimous consent. That being the case, the motion is withdrawn. It will be stood down then. I think the

extent of the motion was Monday, the first order of business, with Mr. Reville to be here with whatever was requested of him. Mr. Runciman, as a matter of courtesy, maybe you could contact him and let him know.

Okay, we are back to Mr. Philip's motions or amendments. I do not think it is necessary to read them. We have them before us.

Mr. Philip: You have them before you. Since Mr. Chiarelli seems to object to 1990, of course, and that being his only objection, I am sure you will want to give him time to move an amendment.

Mr. Chiarelli: If you were listening, that is hardly my only objection.

Mr. Philip: It seemed to be your only argument.

Mr. Chairman: I am on the edge of my chair to find out how the vote is going to go, so are we ready for the vote, Mr. Philip?

Mr. Philip: Before we take the vote, what we are doing here by breaking them down is in fact giving the government members an opportunity to vote for a simple review in two years' time, a select committee to review the present legislation without any changes to the bill being in any way built into this amendment. If they vote for sections 1, 2 and 3, the first three amendments now, as they are separate amendments, all they are doing is saying, "Yes, we are not afraid of having a public review of this controversial legislation in two years."

Mr. Campbell: Or yes, we have no bananas.

Mr. Philip: I am sorry? It is so rare to hear any contributions from the member for Sudbury that I was taken by surprise and did not hear him—unlike his predecessor mother, who occupied more Hansard in the justice committee than any other member on earth, and quite eloquently.

Mr. Ballinger: How could she have ever outdone you?

Mr. Philip: I was chairman at that time, and therefore I could not occupy an awful lot of time.

Mr. Chairman: Let us try to deal with the subject, which has now been divided into four parts.

Mr. Philip: I move my first amendment.

Mr. Chairman: Those in favour of the first amendment, please signify.

Mr. Kanter: I believe only two members of the New Democratic Party can vote, not three.

Mr. Chairman: Those in favour of Mr. Philip's first amendment?

Mr. Runciman: Recorded vote, please.



The committee divided on Mr. Philip's motion to add subsection 6a(1), which was negated on the following vote:

Ayes

Hampton, Kormos, Runciman.

Nays

Ballinger, Campbell, Chiarelli, Hart, Kanter, Sola.

Ayes 3; nays 6.

Mr. Chairman: Can we move to number two?

Mr. Philip: To be technical, I suppose it should be my colleagues who move these amendments.

Mr. Chairman: It is your motion. I do not think there is any problem with your moving it.

Mr. Philip: I move the second motion.

Mr. Chairman: Those in favour of Mr. Philip's second motion?

Mr. Runciman: Is this as worded in the original?

Mr. Chairman: Yes. Those in favour of Mr. Philip's second amendment, please signify. You wish a recorded vote as well, I gather.

Mr. Runciman: Yes.

The committee divided on Mr. Philip's motion to add subsection 6a(2), which was negated on the following vote:

Ayes

Hampton, Kormos, Runciman.

Nays

Ballinger, Campbell, Chiarelli, Hart, Kanter, Sola.

Ayes 3; nays 6.

The committee divided on Mr. Philip's motion to add subsection 6a(3), which was negated on the following vote:

Ayes

Hampton, Kormos, Runciman.

Nays

Ballinger, Campbell, Chiarelli, Hart, Kanter, Sola.

Ayes 3; nays 6.

Mr. Chairman: The fourth amendment, Mr. Philip?

Mr. Philip: Well, I am completely shocked at the way the vote went. The government members of this committee argued against my fourth amendment and said that was the objectionable part, that they basically did not object to reviews or to sunseting. The first three amendments simply said that this legislation would be reviewed in two years. One has to say, my goodness, what are these fellows afraid of? Maybe down deep they really realize that the majority of the population in Ontario against whom they are ramming this legislation through are actually right.

Maybe in two years' time a select committee will show exactly how bad this legislation is. One has to ask, what kind of games are the members of the Liberal Party playing on this committee when they are afraid of a simple review after two years of the legislation which they have introduced and which they are trying to defend against public opinion?

Mr. Chairman: Order. Are you now addressing subsection 4?

Mr. Philip: I am tempted almost to withdraw subsection 4, which was so objectionable to them, but I had thought that they would vote for the first three.

Mr. Chairman: Are you tempted or have you succumbed to temptation?

Mr. Philip: I am willing to take my fate. As the public of course has seen this government with its overwhelming majority ramming this legislation down its throat—

Mr. Ballinger: Cut it out. It is an old song, Ed. People are tired of listening to it.

Mr. Philip: I think they are tired of you, Mr. Ballinger, and other members not listening to them.

Mr. Ballinger: I do not think they are at all.

Mr. Philip: I can tell you that my mail is running overwhelmingly against this legislation and I am doing what my constituents want.

Interjections.

Mr. Chairman: Have I lost control of this entire meeting or what?

Mr. Philip: It is too bad that Mr. Ballinger cannot make arguments against motions rather than introduce and simply—

Mr. Chairman: Mr. Philip, I gather that—

Mr. Philip: I am quite willing to wait and introduce my motion next week, if Mr. Ballinger wishes to speak.

Mr. Chairman: Actually, I thought you had been tempted to withdraw it. If you did not withdraw it, I would at this point rule that it would be out of order. Since the other three clauses fell, there is really no point to the amendment. But you said you were tempted to withdraw it and perhaps we could end the day on that note.



Mr. Philip: The easiest way would be to allow them to defeat it.

The committee divided on Mr. Philip's motion to add subsection 6a(4), which was negatived on the following vote:

Ayes

Hampton, Kormos, Runciman.

Nays

Ballinger, Campbell, Chiarelli, Hart, Kanter, Sola.

Ayes 3; nays 6.

Mr. Chairman: It being almost six o'clock, we stand in recess until January 9, 1989, after routine proceedings.

The committee adjourned at 5:59 p.m.





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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT  
EMPLOYMENT STANDARDS AMENDMENT ACT

MONDAY, JANUARY 9, 1989



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Offer

Collins, Shirley (Wentworth East L) for Mr. McGuinty

Hart, Christine E. (York East L) for Mr. Mahoney

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Farnan

Sola, John (Mississauga East L) for Mr. Polsinelli

Clerk: Deller, Deborah

Staff:

Revell, Donald L., Senior Legislative Counsel

Swift, Susan, Research Officer, Legislative Research Service

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, January 9, 1989

The committee met at 3:45 p.m. in room 151.

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT  
(continued)

Consideration of Bill 113, An Act to amend the Retail Business Holidays Act.

Mr. Chairman: When last we met, Mr. Runciman wanted further information from legislative counsel on the motion on section 4, subsection 5(1) of the act.

Mr. Runciman, I understand legislative counsel agrees totally with Mr. Spring. Maybe I should let him speak for himself.

Mr. Revell: I have had the advantage now of reading Mr. Spring's opinion which was given last week on the effect of the Zylberberg case, and I concur in his opinion. I am reinforced in my opinion by the decision in the Edwards Books case, a decision of the Supreme Court of Canada which, dealing with the present act, found that it did not violate section 2 of the charter. It also went on, of course, to deal with the issue of Sabbatarian exceptions. I think the present bill is within the guidelines laid down in the Edwards Books case.

Mr. Runciman: I wonder if Mr. Revell indicates that his recollection was that his responsibility in this matter was simply to review Mr. Spring's comments. That is probably the case, but in the last meeting, none of us could really recall the specifics. Maybe Mr. Revell is in the same position in the sense that I felt there were other aspects of it that were different from it, and we simply were not asking for two opinions on the same subject. I thought there were different aspects of this case.

I think this concerned the chairman, and in fact, the chair raised the point of having the legislative counsel look at a particular aspect, whereas Mr. Spring was going to be looking at perhaps the broader question. My memory may be faulty on that, but it seems to me passing strange that we have asked Mr. Spring to review this concern and then also asked legislative counsel to do the same. I just cannot see the committee doing that. I thought there were some very clear differences in terms of the kinds of tasks that we were assigning.

Mr. Chairman: I am afraid I cannot help you, Mr. Runciman. Mr. Revell, is there anything that you wish to add?

Mr. Revell: That is my recollection of it. I checked with the clerk and the clerk's note, in fact, shows that it was only referred to Mr. Spring. How I got involved in the piece, I do not know. Certainly it would appear that I did the same research and read the same materials Mr. Spring did. When I ran into you in the hallway and mentioned that I had taken a look at it, that was what I had based my opinion on.



Mr. Runciman: Okay, Mr. Chairman. I will accept that.

There is another element of this particular section of the bill that I would like to raise, at least briefly. It may have been raised by a number of religious groups that appeared before the committee in the summer. The concern that I have is attributed to the Canadian Jewish Congress. It is dated September 19, 1988. I am not sure what that refers to, whether that was an appearance before the committee or not, but they make reference to this section of the bill also in their concern about its not being "in consonance with the spirit of the Ontario Human Rights Code," which in section 22(2) states: "The right...to equal treatment with respect to employment is infringed where a form of application for employment is used or a written or oral inquiry is made of an applicant that directly or indirectly classifies...by a prohibited ground of discrimination."

I will put the rest of this section in the record too.

"Undoubtedly, it was the mindfulness of this principle which led the framers of the Sabbatarian exemption in the original Sabbatarian exemption to stay away from reliance on any religious criteria.

In our submission to the select committee on retail hours, we praise the wisdom of the Retail Business Holidays Act in this regard, noting that for government to inquire into matters pertaining to religious belief and practice would be inappropriate, offensive, an invasion of privacy and a violation of freedom of religion."

I would appreciate hearing some comments perhaps from counsel or the parliamentary assistant with respect to that specific concern.

1550

Mr. Chairman: As we set the ground rules at the outset, I think it is probably more appropriate for either Mr. Kanter or Mr. Spring to address that.

Mr. Kanter: I think that is perhaps more of a policy issue, and I will try to restate our views on that which I think we indicated on one previous occasion at least.

The question of when it is appropriate and when not to inquire about a person's religious background is a delicate matter. However, it was our feeling that under the circumstances, we were doing so in the context of expanding religious freedom, promoting religious freedom, promoting the economic opportunities of those who may wish to close on a Sabbath other than Sunday and be open on Sunday; that this was not an inquiry that would be carried out of every merchant who did this but rather only in the situation where the police, either on their own initiative or through complaint by others, wanted to inquire.

I would suspect, in many cases—certainly some of the people who came before this committee—it would probably be quite obvious where a store was closed on Saturday, whether it was a kosher butcher shop or a store perhaps closed on a Friday in a Muslim area, where the religious persuasion of the owner would probably be fairly apparent to all concerned and no inquiry would be necessary. It is not our view that this legislation would spawn an automatic inquiry.

It is our view that the religious beliefs of the owner would only be relevant in the case of investigation or examination and that we were trying to balance our general concern that under the provincial framework and the provincial law, most stores would be closed with the very necessary requirement, as a point of principle and as a point of maintaining the legality of the law. The BC law, I note, was struck down because it did not have a Sabbatarian exemption. We feel it is an adequate and realistic balance that we have introduced in section 5.

Mr. Runciman: I was trying to listen closely there. I did not hear Mr. Kanter deal directly with the concern expressed about the exemption not meeting with at least the spirit of the Ontario Human Rights Code. I stated specifically the concerns of the Canadian Jewish Congress in respect to that.

Mr. Kanter: I do not know if I could put my finger on it, but perhaps the clerk might: there was a communication before this committee, and I realize that in the welter of communications this committee has received, this one may not have been at the top or even near the top of Mr. Runciman's pile, but there was a communication from the Ontario Human Rights Commission in connection with this bill in general, and I believe section 5 in particular. My recollection is that the communication was in support of the government bill from the perspective of the human rights commission.

I can advise the member that this communication was received, certainly by me, without any prior involvement or even knowledge of its contents. I understand your concern; I think it is a well-placed one, but perhaps we could ask the clerk during the course of the session today to see if she could locate that communication from the Ontario Human Rights Commission. It is my clear recollection that they are in support of the legislation both in general and with respect to section 5.

Mr. Runciman: I have a final comment. I want to put on the record and reiterate that the Canadian Jewish Congress obviously disagrees with the position of Mr. Kanter and the government in respect to this. In fact, they have pointed out that in their view: "Bill 113...introduces a new discriminatory component. In subsections 5(1) and 5(2), religion is clearly set out as the reason for the Sunday exception. Furthermore, the identification by religion of the affected retail proprietors is called for in legal documents, implicitly in the case of a sole proprietor and explicitly in the case of a partnership or of a corporation.

"We encounter at least two secondary problems with this amendment. One, it strikes us as somewhat illogical that an act, ostensibly secular in purpose, introduces an exemption explicitly religious in nature. Two, we wonder how a corporation or partnership can have a religion, especially when Brian Dickson, Chief Justice of the Supreme Court of Canada, in the Supreme Court's judgement of December 18, 1986, on the constitutionality of the Retail Business Holidays Act unequivocally stated, and I quote, 'I have no hesitation in remarking that a business corporation cannot possess religious beliefs.'"

I simply wanted to put that on the record, Mr. Chairman.

Mr. Chairman: I am not certain whether we are going to vote on this now or if we are going to wait the—

Mr. Philip: I have a question before we proceed. My problem is that as I read subsection 5(1) now and as I read the amendment, I do not think either deals with the problem I am concerned about. I wanted to ask counsel a

question and perhaps Mr. Kanter might answer the question.

As I read subsection 5(1) now, anyone could decide that he wishes to list Tuesday as his day of religious rest and could conceivably close on a Tuesday, which is a slow business day, and open on Sunday. Under subsection 5(1) as it now stands, could that be possible?

Mr. Kanter: I guess it is a mixed question of policy and law, but my response to that would be: only if it was by reason of the religion of the owner, not if it was for purely commercial reasons. That, I think, is the position we would be in if we accepted the amendment proposed by Mr. Runciman.

Mr. Philip: Conceivably, though, I could have a very large retail business with 5,000 employees, or 1,000 employees if you want to be more realistic, and declare that I belong to the Oom-pah-pah religion; as high priest of the Oom-pah-pah religion it is my belief that Tuesday is my day of religious persuasion. As a result of the religious services of the Oom-pah-pah religion on a Tuesday, I could open on a Sunday and make 1,000 people work, as Tuesday is a bad day for my business and Sunday might give me a competitive advantage over my competitors who would be forced to close because their owners did not belong to the Oom-pah-pah religion. Is that correct?

Mr. Kanter: I think you are probably technically correct in that you could. I would hope that in your hypothetical situation you would be more principled than you suggested, doing it purely for commercial reasons. However, what I would like to emphasize is that I think that is the very situation our legislation is intended to catch and the very situation wherein an inquiry would quite possibly be undertaken.

Mr. Philip: More realistically, am I correct to say that I could, if I were of the Jewish persuasion or Muslim persuasion perhaps, decide to close on a Friday or a Saturday, and if I have 1,000 employees, who by sheer demographics one could probably assume a majority to be Christian or certainly not Muslim or Jewish, I could because of my personal religious persuasion force them to work or at least force the store in which they are working to be open on a Sunday, which is their religious day or day of rest. Is that correct?

Mr. Kanter: I think you hinted at a very important distinction towards the end of your question; that is, you could try to open the store, but whether that would be a realistic business option would depend on the willingness of your employees to work. As you know, there is a Bill 114, companion legislation to Bill 113, that will protect employees, including those who now are required to work on Sundays.

Mr. Philip: Well, no employee representative—

Mr. Kanter: I think that is a very important distinction.

1600

Mr. Philip: That is only an important distinction if Bill 114 does protect any employees. You cannot name one trade union or employee representative group which said that Bill 114 did provide any protection.

Mr. Kanter: Certainly we on this side are looking forward to having an opportunity to discuss Bill 114. As you know, we have spent a considerable time on this bill. I think this is now the 57th or 58th day. I think I can speak for my colleagues: we are looking forward to an opportunity to discuss



Bill 114 and any positive, constructive suggestions you might have to improving that piece of legislation.

As you will recall, we have accepted a number of amendments from you and the official opposition party to try to improve this bill. In terms of your concerns about employee protection, we feel we have met those concerns. We look forward, however, to any constructive suggestions you might have with respect to that legislation at an appropriate time.

Mr. Philip: With respect, Mr. Kanter, I moved an amendment which would have been acceptable to us, which would have protected the right which was contained in the original bill of the small businessman, the Jewish bakery or butcher shop, the Muslim butcher shop, to remain open on Sunday in exchange for closing on Saturday. Nobody questioned that.

What the original act did not envision was somebody simply saying that he would use his personal religion to force an employment of thousands of people who had a religious persuasion whereby their Sabbath happened to be a Sunday. You had an opportunity to vote for that. I think it was working under the original act.

We have had Jewish businessmen appear who have said they think this is unrealistic. They do not want to force their employees, the majority of whom happen to be Christian or whom they suppose to be Christian; they do not bother asking them what their religious beliefs are. They think this is unrealistic. That was the testimony before the select committee, anyway. To my recollection, we did not have any person appearing before the committee on this bill, but that was the testimony before the select committee by Jewish businessmen who said: "We just don't want that problem. Keep the thing the way it is. The seven employees make sense for the small businessman, but don't impose this kind of thing on large corporations."

What I am saying is that I am not sure Mr. Runciman's amendment solves the problem I have with the whole of section 5. You are going to see that there will be major problems with section 5; that people can, through a variety of partnerships and various other arrangements, actually checkerboard a municipality and gradually force that municipality to open up. Fairly large stores will open on Sunday in exchange for being closed on other days of the week.

I have no objection to what Mr. Runciman is trying to do, but I just do not think it is going to solve the problem. The problem is in section 5, not in Mr. Runciman's amendment to section 5.

Mr. Chairman: Are we ready to deal with Mr. Runciman's motion? Do you wish a recorded vote, Mr. Runciman?

Mr. Runciman: No.

Mr. Chairman: I was going to say that, because the clerk is not here.

Those in favour of Mr. Runciman's motion?

Mr. Kanter: I would like to call for a recorded vote on Mr. Runciman's motion.

Mr. Chairman: The clerk is not present and we will have to wait for the clerk if you wish a recorded vote. Do you wish a recorded vote?

Mr. Runciman: Let the record show that the government is delaying this bill again.

Mr. Ballinger: I will volunteer to keep track of the vote.

Mr. Chairman: No. I think the recording has to be taken by the clerk. Would you be content with a voice vote, Mr. Kanter?

Mr. Kanter: Does that record the voices of those who vote for and against? That is what we want to do.

Mr. Chairman: I think one who gleans Hansard could probably determine— The clerk has gone to check something. I asked her to check something. That is why she is not here.

Mr. Ballinger: It is all your fault.

Mr. Chairman: That is true. I take full responsibility for having sent the clerk out on an expeditionary mission. Do you still wish a recorded vote? If you do, we can adjourn for five minutes to—

Mr. Kanter: No. It has been my experience that adjourning this committee sometimes lasts a little longer than one would anticipate. Let's go ahead with it.

Mr. Chairman: All right. We are ready to proceed, then. Those in favour of Mr. Runciman's amendment? Those opposed? The amendment is defeated.

Motion negatived.

Mr. Chairman: Let's move on. I may have to pass these out myself. I am not sure anyone has this. I will collect double duty here.

Mr. Philip: You know the Premier (Mr. Peterson) decided to give you only a 4.6 per cent pay increase.

Mr. Chairman: Let's not talk about that at this point, please.

I understand from Mr. Runciman that he is withdrawing that motion. There are two NDP amendments before us, Mr. Philip. Which of these are we going to deal with?

Mr. Philip: I have advised the clerk that we will deal with the first one.

Mr. Chairman: Are you withdrawing the second one, or should I not ask that?

Mr. Philip: I have not decided yet what I am going to do with the second one.

Mr. Chairman: Which is the first one?

Mr. Philip: The first one is the longer, more elaborate one.

Mr. Chairman: Could you just give us the start?

Mr. Philip: I thought we were dealing with the amendment to section 1 first.

Mr. Chairman: Mr. Runciman has withdrawn that motion. Is that correct, Mr. Runciman?

I have only one before me, but I gather there are two.

Mr. Philip: I gave the clerk two versions of the same amendment to which I had redrafted different versions.

Mr. Chairman: Has one of them been distributed?

Mr. Philip: I told her it would be the longer one that would be used. Shall I just read the amendment into the record?

Mr. Chairman: Just a second. I just want to find out whether that has been distributed already.

Mr. Philip: Yes.

Section 4:

Mr. Chairman: Mr. Philip moves that section 4 of the bill be amended by adding thereto the following as a section of the act:

"4a (1) If the council of a municipality passes a bylaw under subsection 4(1), the council shall give notice of the bylaw within 15 days after it is passed and of the procedure for appealing it by,

"(a) publishing the notice in a newspaper with general circulation in the municipality; and

"(b) sending the notice to every person who has requested notification respecting the bylaw.

"(2) Any person may, not later than 35 days after a bylaw is passed, appeal to the Ontario Municipal Board by filing with the clerk of the municipality a notice of appeal setting out the objection to the bylaw and the reasons in support of the objection.

"(3) Upon receipt of a notice of appeal, the clerk of a municipality shall compile a record and forward the notice of appeal and the record to the secretary of the board and shall provide such information or material as the board may require in respect of the appeal.

"(4) The board shall hold a hearing and shall give any interested person an opportunity to make representations in respect of a bylaw.

"(5) The board may allow or dismiss an appeal and confirm, repeal or amend a bylaw.

"(6) A decision by the board under subsection (5) is final.

"(7) A bylaw that is appealed does not come into force until the board has decided all appeals of the bylaw or until the appeals are withdrawn."

Mr. Philip: This simply provides to local concerned people—indeed, to business people as well—an appeal mechanism.

You can make the simplest kind of adjustment on a street and if someone



or some group objects to your request—it could something as simple as rezoning or a very modest increase in density or something like that—then the citizens have the right of an appeal, to have their day in court, so to speak, and present their case. If a municipality has acted in a capricious way or in an illegal way or in a way that is contrary to its bylaws, then the citizens have an appeal mechanism they can use. If a council decides in some way to violate previously made commitments, then there is recourse. The recourse is to go to the Ontario Municipal Board. Surely in a case like this—

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Mr. Chairman: Could I interrupt you for just a second? How does the amendment which was passed out by the clerk to the members of the committee differ from the one I have just read? The reason I am asking is that I think you are debating the second one.

Mr. Philip: The one you just read is the one I am debating.

Mr. Chairman: Is it? Because I have eight or 10 of them here and I just could not believe that they had been passed out to the members.

Mr. Philip: They were passed out in the package that everyone received.

Mr. Chairman: I realize that. Okay, that is fine. I just wanted to be sure.

Mr. Philip: I think the clerk made extra copies in case somebody did not get their package.

Mr. Chairman: Okay. I just wanted to be sure. Go ahead.

Mr. Philip: What we are asking for is an appeal mechanism, so a local group or an individual who feels he has been aggrieved by a municipality may in fact have an independent adjudication. That seems reasonable. If you are going to allow it with anything from rezoning to various land use decisions, then it seems reasonable to also allow the Ontario Municipal Board jurisdiction to hear an appeal under this. I think most municipal councillors would agree that is consistent with other matters they deal with. Therefore, I ask the support on this amendment.

Mr. Runciman: I just wanted to indicate our support for the amendment. I think the lack of any appeal mechanism is one of the glaring omissions of this legislation, and I think the approach Mr. Philip has taken is an appropriate one. It has been pointed out to the committee on previous occasions that the municipal board has the power to review municipal government decisions on planning matters, zoning bylaws, subdivision plans, official plans, capital expenditures, debentures and so on. I think it is the body familiar with the process of municipal government and I do not see a great deal of difficulty in respect to the board developing guidelines to govern the implementation of the local option in a fair and equitable manner.

I think it has been pointed out on a number of occasions, and certainly many of the people making submissions before this committee pointed quite clearly to the fact that there was no appeal mechanism built into the legislation. We are supportive of this amendment. We think it is a much needed addition to the legislation.

Mr. Chairman: Do any further members wish to address the matter?

Mr. Kanter: Yes, if I might. We will not be supporting this amendment. We do not hide our position; we are very forthright on this thing. I note that there is no such appeal under the current legislation, where a very substantial number of municipalities have exercised their power under the existing legislation to have Sunday shopping in whole or in part or on a seasonal or partial basis. The mere fact there is no such appeal under the current legislation does not, I do not think, totally determine the issue. I think there are a number of reasons why it would not be wise to adopt this amendment.

First, I think it is important that everyone is aware of the much greater right of the public to participate in Sunday opening or Sunday closing decisions which we have established through this legislation. I think most members have before them the package of information. On the third or fourth page of the information there is an amendment the government adopted, not permissive but rather directive, mandatory, to ensure that before passing a bylaw which would open or close things on Sundays, different from the provincial closing framework, the municipality must hold a public meeting with respect to the proposed bylaw. It must publish notice of the public meeting in a newspaper having general circulation. It must permit any person who attends the public meeting the opportunity to make representations.

These are substantial increases in the amount of public input into this matter, which, as Mr. Philip points out, may have a substantial effect on people in their own neighbourhood. In fact, this is very similar to the provisions of the Planning Act where there is a rezoning.

I find it a little inconsistent that both opposition parties, as I recall, opposed these measures, voted against these measures to permit greater public input on these matters.

Mr. Philip: Who voted against it?

Mr. Ballinger: Hansard knows.

Mr. Philip: There must be a record of how we voted.

Mr. Kanter: We have a record. Let me read from the record.

Mr. Philip: I hope you have a record of who voted against even advertising in the ethnic languages of a majority of the population.

Mr. Kanter: Mr. Chairman, I believe I have the floor. Is that correct?

Mr. Chairman: So I understand. While the cat is away, the mice will play. I was just talking with the clerk. Go ahead.

Mr. Kanter: I guess I will not take offence at being categorized in that way.

I would like to read from the record of October 17, 1988 on a motion on public meeting, public notice and the right to speak on this matter. The ayes were Mr. Ballinger, Ms. Collins, Mr. Chiarelli, Ms. Hart, myself and Mr. Sola.

Mr. Philip: What was the motion?

Mr. Kanter: The motion was that section 4 of the act be amended by adding thereto the following subsections:

"(1a) Before passing a bylaw under subsection 1, the council of a municipality,

"(a) shall hold a public meeting in respect of the proposed bylaw;

"(b) shall publish notice of the public meeting in a newspaper having general circulation in the municipality at least 30 days before the meeting is to be held"—the time period you suggested, Mr. Philip, extended from one week—"and

"(c) shall permit any person who attends the public meeting the opportunity to make representations in respect of the proposed bylaw."

I have read who supported that. The nays were Mrs. Cunningham, Mr. Hampton and Mr. Philip.

First, I want to be very clear that this government has, in an important amendment of the bill, after lengthy committee hearings, increased the right of the public to be heard on this very important matter.

Second—Mr. Runciman alluded to this and almost slipped over it—the OMB will have no difficulty in coming up with some criteria to decide these issues. We have spent a long time in this committee listening to deputants from the public, listening to clause-by-clause among ourselves, talking about the question of criteria. It is a very elusive quest.

We have heard that tourism includes everything, including shopping. We have heard that tourism is no excuse to have Sunday shopping. We have heard that border cities want to have Sunday shopping to prevent reverse tourism—their residents going to other cities.

It is quite clear to me, after 57 days of debate and evidence before this committee, that the OMB would be no more able to develop criteria than this committee was. What would happen if they could? We used to have criteria in the old bill that it is "essential for the maintenance and development of the tourist industry" and we have had some years of experience with those criteria. I think there were some members of the audience who were here who have had extensive experience in determining just how sound or fragile those criteria were.

There was one fruit market in a regional municipality near Metro Toronto—it was the regional municipality of Peel, as I recall—and that single fruit market applied to its local municipality and said, "We are essential for the maintenance of tourism in our area," and council went along. Then, given the reading of the old act, one of the interest groups in this area challenged them in the courts. What did the municipality do? It hired a consultant, it had a quickie study done, a five- or six-page study saying, "Yes, from time to time tourists have indeed dropped in and shopped at this particular establishment." Lo and behold, it turned out that satisfied the criteria.

So I would say, first, that the OMB could not possibly come up with criteria. It could not possibly meet the challenge, which the opposition



parties have certainly not been able to meet, to come up with criteria. Second, even if they could, it would not be very meaningful. Third, it sounds very easy; we pass along this responsibility to some other body as if there is going to be no cost to the people of this province in terms of other work that will suffer.

There have been a number of issues I know the OMB deals with. Mr. Runciman referred to some of them—planning matters, increasingly, planning and housing matters, which are related. There has been great concern expressed, certainly by the government and I think by opposition parties too, about the delays caused by lengthy and extended hearings before the OMB, delays caused before you get to the OMB.

Listen to what the opposition parties would do. If a single drugstore in the city of Toronto wanted to expand its area beyond that permitted by the legislation—my recollection is that the figure which at least one of the opposition parties supported was 5,000 square feet. Let's suppose a single drugstore—whether it be independently owned or Shoppers Drug Mart or IDA or Guardian, I do not care—wanted to expand its square footage by one square foot or five or 10 square feet or some nominal amount. That would have to go before the OMB.

I think that shows several reasons why this amendment would not be helpful but would be very harmful to the people of this province. Since I am sensitive and mindful of the concerns of the opposition parties, I will rest my case.

Mr. Philip: I find it interesting that Mr. Kanter uses the argument of the fruit stand. The argument which has been given throughout this is the whole problem of the tourist exemption. Mrs. Cunningham moved an amendment that set out some fairly clear criteria which could be evaluated not just by the council but could also be used by the OMB in deciding whether there was justifiable reason for allowing stores to be open. It was the Liberal members who voted against that amendment. We only have to look at that amendment.

Unlike Mr. Kanter, I do not want to hold up the bill by giving a long speech, but I moved a similar, somewhat shorter, amendment to section 4. The Conservatives voted with us; Mr. Cureatz and Mrs. Cunningham, who were members of the committee at that time. Of course, the people who voted against it were Mr. Ballinger, Ms. Collins, Ms. Hart, Mr. Kanter and Mr. Sola. I do not think we need any lessons about who is trying to have proper hearings.

Mr. Kanter may recall that it was my amendment that required the 30 days' notice. On the other hand, my other amendment, which would require that where there are large populations who speak a language other than English they be notified, was defeated by the Liberals.

Similarly, they defeated an amendment that would require a municipality to keep a list of who might be interested and advise these people or corporations when there was going to be any matter dealing with this topic. That was defeated, again, by the Liberals.

The Vice-Chairman: I wonder if perhaps you can indicate the relevance to the appeal process in your motion of the comments you are presently making.

Mr. Philip: I thought it would be perfectly clear to you. I am wondering why you did not call Mr. Kanter out of order, Mr. Chairman.

The Vice-Chairman: I was not in the chair at that time.

Mr. Philip: You were in the chair at that time.

The Vice-Chairman: For about 30 seconds.

Mr. Philip: At least for the last few minutes or 10 minutes or hour or whatever it was of Mr. Kanter's speech.

The relevance is fairly clear, Mr. Chairman. I would have thought you would see it. The relevance is that my motion allows the public or a corporation to have an appeal on a municipal decision which may be illegal, contrary to the bylaws or contrary to the process outlined in this legislation or in the bylaws. You have that with other forms of municipal decisions, but this government apparently does not want to give the people or corporations which may be aggrieved an opportunity of appealing something like this, which will affect them so much more than something like a rezoning or a change of bylaw. I guess if the Liberals do not believe in open government, either provincially or municipally, we will have to accept that they are going to vote against it.

The Vice-Chairman: Is there any further debate on the motion? We will, therefore, have a vote on the motion. Do we wish a recorded vote?

Mr. Philip: Yes.

The committee divided on Mr. Philip's motion, which was negatived on the following vote:

Ayes

Hampton, Philip, Runciman.

Nays

Collins, Hart, Kanter, Sola.

Ayes 3; nays 4.

The Vice-Chairman: I understand from the clerk that that is the last of the amendments dealing with Bill 113. Therefore, we will have to go through each section to see whether it will carry and the bill will therefore carry. I understand that the normal procedure is to deal with it section by section and ask if the committee carries that section.

The clerk indicates that sections 2 and 5 have already been carried. We will go back to section 1.

Section 1 agreed to.

Section 3, as amended, agreed to.

The committee divided on section 4, as amended, which was agreed to on the following vote:

Ayes

Collins, Hart, Kanter, Sola.

Nays

Hampton, Philip, Runciman.

Ayes 4; nays 3.

Section 6, as amended, agreed to.

Sections 7 and 8 agreed to.

Preamble agreed to.

Title agreed to.

The Vice-Chairman: Shall the bill, as amended, carry?

Mr. Philip: No. I would like a recorded vote.

The committee divided on Bill 113, as amended, which was agreed to on the following vote:

Ayes

Chiarelli, Collins, Hart, Kanter, Sola.

Nays

Hampton, Philip, Runciman.

Ayes 5; nays 3.

Mr. Chairman: The final item is, shall I report the bill to the House? As we still have Bill 114 to deal with, I want to get the feeling of committee as to whether—

Mr. Philip: When you put that question, I can tell you I will demand a recorded vote. I also feel that as Mrs. Cunningham has participated, she would want to vote against the bill being reported. I would ask if we could have a five-minute recess. Then you can put the question, "Shall the bill be reported?" The New Democrats and the Conservatives will vote against it. I assume the Liberals will vote for it.

Mr. Kanter: He can speak on behalf of the Conservative Party?

Mr. Chairman: I understand that Mrs. Cunningham was on the emergency debate in the House. I do not know whether she will be speaking further on the bill.

Clerk of the Committee: She cannot.

Mr. Runciman: We had briefly discussed this. I think it is appropriate that Mrs. Cunningham be given an opportunity to be here.

Mr. Chairman: All right. I do not have any difficulty with that. I wonder if we can deal with Bill 114.



Mr. Philip: I would prefer that we deal with Bill 114 tomorrow when our critic of the Ministry of Labour will be here, but I am willing to have the vote and have this bill reported to the House as of 10 minutes from now, if you want.

Mr. Kanter: We would have no difficulty with a brief adjournment to see if Mrs. Cunningham could attend to vote on this bill. It is our understanding that the minister will be available, should he be requested to appear before this committee tomorrow on Bill 114.

Mr. Philip: Fine. We will deal with this bill today. We will agree to a five-minute recess. Mrs. Cunningham is not speaking at the moment. She was one of the first speakers.

Mr. Chairman: I noted that Mr. Keyes was speaking. All right. I will be guided by the committee. I am just wondering if you do not wish to have them both reported.

Mr. Philip: When you report them is your business. That is your decision, if you wait until Bill 114 is dealt with and then report the two together. I do not think it is up to me to tell you when you report the bill.

Mr. Chairman: Frankly, I do not care how it is reported, but I understand—

Mr. Philip: I think the reasonable thing would be to report the bill tomorrow if it passes today.

Mr. Chairman: I understand that if we pass it, it is reported and then we would deal with Bill 114 and that would be reported. I do not know whether that makes any sense or whether they should both be reported at the same time. I understand we can do that. The only way it can be done, and the clerk can correct me if I am wrong, is that by unanimous consent we would withhold voting on the reporting provision until tomorrow when we have possibly reported on Bill 114.

Mr. Philip: Let's deal with Bill 113 and deal with Bill 114 as a separate issue.

Mr. Kanter: We will vote on Bill 113 and then report Bill 113 today and consider Bill 114 tomorrow. Is that the emerging consensus?

Mr. Chairman: Actually, I am advised by the clerk that once it is reported, it is then reported to the House forthwith. Is that right?

Clerk of the Committee: If you carry the motion to report the bill to the House today, it will be reported tomorrow.

Mr. Chairman: All right. How long do you need?

Mr. Runciman: I am not sure where the member is.

Mr. Chairman: All right. We stand adjourned until 4:45 p.m.

The committee recessed at 4:32 p.m.

Mr. Chairman: Would members take their seats? We were in the middle of the vote. Shall I report the bill to the House?

Mr. Philip: Mr. Chairman, I request a recorded vote.

The committee divided on reporting Bill 113 to the House, which was agreed to on the following vote:

Ayes

Chiarelli, Collins, Hart, Kanter, Sola.

Nays

Cunningham, Hampton, Philip, Runciman.

Ayes 5; nays 4.

Bill, as amended, ordered to be reported.

Mr. Chairman: The clerk has some more business.

Clerk of the Committee: Is it agreed that we will carry on with consideration of Bill 114 tomorrow? The minister will be available at 3:30 p.m. He does have to be in the House, though, at roughly 4:30 p.m. Does that present a problem? I do not have in my hand any amendments to that bill yet.

Mr. Chairman: Does it present a problem that I have to be in the House at 3:30 p.m. to report the bill?

Mr. Philip: I do not think it presents a major problem. The bill is so bad that there is nothing much that can be said about it. Everybody has already said it.

Interjections.

Mr. Chairman: That sounds like a footnote.

Mrs. Cunningham: If the government is buying it, it will not take more than five minutes.

Mr. Chairman: You have a train to catch, Mrs. Cunningham. You had better hurry. We stand adjourned until after routine proceedings tomorrow.

The committee adjourned at 4:50 p.m.





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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT  
EMPLOYMENT STANDARDS AMENDMENT ACT

TUESDAY, JANUARY 10, 1989



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Ballinger, William G. (Durham-York L) for Mr. Offer

Collins, Shirley (Wentworth East L) for Mr. McGuinty

Hart, Christine E. (York East L) for Mr. Mahoney

Mackenzie, Bob (Hamilton East NDP) for Mr. Farnan

Sola, John (Mississauga East L) for Mr. Polsinelli

Also taking part:

Johnston, Richard F. (Scarborough West NDP)

Philip, Ed (Etobicoke-Rexdale NDP)

Clerk: Deller, Deborah

Staff:

Revell, Donald L., Senior Legislative Counsel

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, January 10, 1989

The committee met at 5:22 p.m. in room 151.

EMPLOYMENT STANDARDS AMENDMENT ACT  
(continued)

Consideration of Bill 114, An Act to amend the Employment Standards Act.

Mr. Chairman: We were awaiting one more member. I am advised we can start despite lack of members from all parties. We are dealing with Bill 114, An Act to amend the Employment Standards Act and we have the Minister of Labour (Mr. Sorbara) here. Do you have an opening statement?

Hon. Mr. Sorbara: I have a very few brief remarks to make in anticipation of clause-by-clause analysis of Bill 114. Perhaps nothing sums up the bill better than the explanatory note in the bill, which reads as follows:

"Employees in retail business establishments as defined in the Retail Business Holidays Act that are permitted to open on Sunday will be able to refuse work that they consider unreasonable. If the employer and employee disagree on what constitutes unreasonable Sunday work, either of them will be able to ask for mediation by an employment standards officer. An employee may also ask for mediation if he or she is punished or otherwise treated improperly for refusing Sunday work that the employee considers unreasonable. If no settlement is reached, the matter will be referred to an independent referee for determination."

The bill is simple and quite straightforward. It tries and succeeds, for the first time in this province, to create a legislative framework in which workers in retail on Sunday can speak to and work out with their employers a reasonable regime for Sunday work. The purpose and principle behind the bill is to ensure, to the greatest extent possible, that the retail work force working on Sundays is a voluntary workforce; that is, that the people who are working in retail establishments, whether they be retail establishments open under the current Retail Business Holidays Act or establishments that may or may not open under any successor act, are there because they want to be there.

The way in which we have determined to do that is to give workers in retail on Sunday a right they have not had before, and that is to say to their employers, "No, I do not want to work the assignment you have given me on Sunday." That gives rise to a process where the worker has the opportunity to continue to exercise that right until and unless a referee appointed under the Employment Standards Act determines the assignment is a reasonable one.

Reasonableness under the law is a concept that is commonly found in statutes of this sort, in statutes dealing with the workplace, as well as a number of other statutes. Here, under this act, a good deal of discretion is left to referees. One would expect that some jurisprudence would develop. In addition, the bill provides a number of criteria or indicia that a referee can look to in determining whether the issue before him or her is to be decided in favour of the employer or the employee.



In short, what Bill 114 does is create a context in which workers who do not want to work on Sunday can exercise a right without fear that their jobs will be threatened or that they will be retaliated against in any other way. That being said, I look forward to clause-by-clause analysis and comments from the committee.

Mr. Mackenzie: I do not know where the minister has been in terms of modern-day workers' legislation. I can tell him the 30 per cent of workers who have a union—I am not sure what percentage it is in the retail field—might be able to use the appeal to the employment standards officer and the "unreasonable" argument, but they are not going to be very successful with it. I suggest to the minister that if he knows a union or a union leader in this or any other field that thinks this legislation is workable, I wish he would tell us, because they do not think it is workable. The unreasonable definition has not been that successful and certainly is not going to be successful in terms of Sunday hours when there are so many additional options.

To begin with, anybody who is not lucky enough to be organized, which is a vast majority of retail workers, is going to have very little protection under the right to refuse and the definition of what is unreasonable.

On top of that, the big problem you have in the retail field right now—I suspect it is exactly the same in Toronto—is if you just go down to the Centre Mall or out to Lime Ridge Mall, Eastgate Square Shopping Centre or any of the malls around my town and talk to the employees at Eaton's, Sears or Robinson's, what you will find is that there are more and more part-timers and fewer and fewer full-time employees. Not only that, but the complaint of many of the employees is that their hours are being constantly cut back even further. Of course, there is a variety of reasons why there are more on part-time. There is a savings in terms of the benefits package these people have.

I have already had employees come in to me—I can think of one of the most recent cases—from two of the stores at the Centre Mall who have found their hours cut back from 22 or 24 hours to 18 and 16 for no reason. They were not told their work was not good enough. All an employer has to do when somebody says to him, "We're not going to work Sunday if we come into a situation where we will have Sunday shopping in these stores," is that he does not have to fire them and he does not have to discipline them; he can cut that 16, 18 or 20 hours back to 12 or 14 hours.

When that has been a pattern for the last several years, I do not how you prove that is not why they have done it. I defy you to take a case and win it on those grounds, that all of a sudden you are finding what was already a restricted part-time employment job cut back even further.

Not only do those who would be first in having to enforce this, the unions, even though a minority of the workers are organized—I have found unorganized workers in our town and here in Toronto go to the organized workers of the unions. Some of the employees at Sears ended up at the Local 1005 office with their complaints. They go to the unions and ask them for advice or help. Most of them, as I say, are not organized. None of them thinks this clause is, quite frankly, worth the powder to blow it to hell.

On top of that, supposing you use the clause or try to use the clause and you go to the employment standards officer, I do not see anything in this

bill, and I have not heard anything from the minister that says we are going to have additional staff in the employment standards offices or additional officers to deal with this.

If you are lucky enough to be able to prove the request was unreasonable, which is going to be difficult at best, and if there is not some other comeback on you such as a further restriction of hours in terms of part-time employees, which is a big chunk of retail trade, then you tell me how fast that employment standards officer is going to deal with it. If you can set up a fast-track proposal, that is fine, but what is it going to do to what is happening already with employment standards officers? You know darned well that in some cases we are taking months and months to deal with cases of company employment standards officers.

If there is any use of it at all, a substantial increase or otherwise, how fast are they going to get any action in what is going to be one of the most difficult things to prove, especially, as I say, where you do not have workers lucky enough to be organized into a union? I think this is probably one of the poorest and weakest bills I have ever seen come from a Minister of Labour in this province. I am not just telling you that—that is my honest, firm and hard belief—but as I say, I have talked to most of the affiliates of the Ontario Federation of Labour and I do not know one of them that thinks the bill is worth a damn in enforceability.

If you have some who want to defend it, I would like to go to them myself, because I know some of these people, and find out on what grounds they are going to say the bill is worth while. I think it is a terribly poor piece of legislation in terms of any real protection for somebody who decides he is going to refuse Sunday work: Let me tell you that if they do, (1) they had better have an awful good reason, (2) they had better have a union, and (3) they had better have a company that is going to accept that decision without going to an employment standards officer or they are going to be for ever and a day trying to get the employment standards division to deal with that particular complaint.

To me, it is as simple and straightforward as that.

Mr. Chairman: The minister would like to respond. Perhaps we will wait until the critic for the Progressive Conservative Party comments on your opening statement.

Excuse me a second, Mr. Hampton. We will hear from the critics first on the minister's statement, and then I will call for any amendments, questions and so on on the bill. You can shout them out. We will deal with it at that point.

Mrs. Cunningham: I am sorry I did not hear all of the minister's statement, but as I entered the room it sounded somewhat like the statement the minister made on August 4 as he introduced this bill. We had some questions at that time at first glance and the questions remain. There is our tremendous concerns around section 39k and the criteria listed in the bill for the determination of unreasonableness.

We are sorry to again look at a bill that professes to give the members of the retail workers' group some protection around whether or not they have to work on Sunday. If they are being asked to work when it is unreasonable, we just do not see this as being a solution to the problem of the person who in fact does not want to work on Sundays in any retail establishment. I suppose



what we are really sorry about is the fact it pretty well legislates that one would have to have a collective agreement. At least, if one did have a collective agreement, he would be able to have some clout with the mediator.

I am sure the minister will respond to that because we raised that point before. He said he would give some thought to the fact that perhaps clause 39k(2)(a) should not stand alone, but should talk about a letter of agreement or something, because what we are really talking about here and across Ontario when we talk about retail workers are more frequently people in very small business establishments, employers who have just three or four workers who have been used, I think, in the past to agreements that have been either verbal or something that was in a very informal state of a written letter.

I think the intent here probably is not to encourage very small groups to form unions and have collective agreements or however they would get a collective agreement. In fact, if one looks at this bill and if the criteria remain the same, I would certainly agree with my colleague who just mentioned you had better have a collective agreement. I think that is an unfair message to be sending out to workers in this province, and more important, to employers of groups of three and four people. That is the reality of the retail business establishment.

The other tremendous concern here, as mentioned in the minister's own statement, is the fact that people perceive this bill as one that will assist them. If we did not have Bill 113, we would not need Bill 114. It should be very clear to the public that the government is admitting we should be prepared to look at more problems because of the implementation of Bill 113 and should be looking at more people having to work on Sundays.

What we are really talking about, then, are some very real expenses for the public in many ways. Although the minister assured us he would not have to employ more staff, that is not easy to believe. I can think of other reasons why this government has not had to employ more staff, yet we are looking at upwards of 7,000 new employees in the past 20-odd months. I suggest this is a place where one is encouraging people to complain about having to work on Sundays and I think the bill will be tested, no matter what happens, because there is so much resentment towards it.

We are getting into bureaucratic costs on behalf of the government and more costs, because of Bill 113, on behalf of the municipalities, and now we are looking at additional costs to the employer and perhaps the employee. What this bill really does is put people in the position of having to pay even more for the merchandise and food they are going to be purchasing on Sundays, because we know the real cost of keeping a business establishment open seven days a week over six days a week, as we were advised all summer long, is the cost of the overhead.

Somebody has to pay for this and two groups of people will pay: the taxpayers and the consuming public. The gains may be with the large mall owners because of the agreements they have with their tenants, or the gains may be with the legal profession, which will be provided with a lot of opportunity for more work.

Those are basically our concerns. They were our concerns in August. We did not take the time then to get into some of the details we may take time to get into in this committee. Our concerns stand. We did not hear any responses to them from the government during the hearings, even though the same points were made on a number of occasions. We are anxious, of course, to hear during



the clause-by-clause of any amendments that will be put forward because of these same comments that were made when this bill was introduced on August 4.

Mr. Chairman: Are there any comments, questions or amendments to this bill, and if so, to which clause? Perhaps members could let me know on which clause there will be comments, questions or amendments.

Mrs. Cunningham: The questions remain. They are in the Hansard of August 4 and the minister has had some time to research them, I am sure. I am just wondering if he has any responses.

Hon. Mr. Sorbara: We will not be proposing any amendments to the bill.

Mr. Philip: On that, I have a question on section 1. As I recall, and I will have to go through Bill 113, Bill 113 changes "Boxing Day" to "the 26th day of December." This bill refers to "Boxing Day" in section 1.

Mr. Chairman: It is "the 26th day of December."

1740

Mr. Philip: Would there not be a need for an amendment to change "Boxing Day" to "the 26th day of December"?

Mr. Kanter: It is my understanding they both refer to "the 26th day of December."

Mr. Chairman: Yes, they do. They changed it from "Boxing Day" to "the 26th day of December."

Mr. Philip: Then it is the explanatory note on section 1 that needs to be changed because it refers to "Boxing Day" rather than "the 26th day of December."

Mr. Chairman: The explanatory note is not part of the bill, but I will ask legislative counsel.

Mr. Revell: In the explanatory note, we just used the common name for "the 26th day of December," which in our tradition is Boxing Day. I do not think there is any huge problem.

Mr. Philip: Would it not make some sense, since you go to the trouble in Bill 113 to change "Boxing Day" to "the 26th of December," and since you go to the trouble here of doing the same thing, to include in your explanatory note that Boxing Day can only be, as I understand the amendment, December 26? Is that correct?

Mr. Revell: By common definition, I believe that is the case. If you wish me to change the explanatory note to say "the 26th day," I will certainly change it.

Mr. Philip: It just seems to me the explanatory note should be consistent with the bill.

Mr. Chairman: Maybe I could ask, Mr. Revell, does the explanatory note become part of the bill?

Mr. Revell: No.

Mr. Chairman: So when the bill is printed in the Statutes of Ontario, it will not have the explanatory note.

Mr. Revell: The explanatory note will not be there.

Mr. Chairman: Does that help, Mr. Philip?

Mr. Philip: It is not terribly helpful. If the purpose of the explanatory note is to help people understand the bill, it does not help very much if the explanatory note is not consistent with the bill.

Mr. Chairman: Is there any way we can rectify that if Mr. Philip is not—

Mr. Philip: I am not going to hardline it on the point. I think I know what we are talking about. I think it is fairly clear to me from reading the bill what we are talking about. It just struck me that the explanatory note should reflect what is in the legislation. I am not going to be difficult about it. If people do not agree with me, then let's pass on and be on to the next thing. I think it would be reasonable to change it and Mr. Revell seems to be indicating he has no objection to that change.

Mr. Chairman: I understand from the clerk that legislative counsel can just go ahead and do that, since it is not part of the legislation.

Mr. Revell: I might point out that the bill will not be reprinted unless it is amended in committee. If the bill is reprinted, we will correct it at that stage.

Mr. Chairman: Do we have unanimous consent that it be corrected?

Mr. Philip: I have Mr. Revell's assurance. I do not want to put taxpayers to the extra expense of reprinting the bill because of a minor point. But if it is reprinted, since Mr. Revell has said he will make the change, then I will just accept that. I thank you for the explanation.

Mr. Chairman: Are there any other comments, questions or amendments to this bill, and if so, to which clause?

Mr. Philip: I have some comments on section 2, but I would rather give way to the minister to respond to the two previous speakers. I think it is reasonable we not lose track of some of the points they made.

Mr. Chairman: Before we do that, you have indicated it is section 2 you are concerned about. Are there any other members who wish to speak to anything before section 2?

Mrs. Cunningham: My first point was that I had asked some questions in August. Although the minister says he is not making any amendments, is he prepared to answer the questions?

Mr. Chairman: We will have those responses in just a moment. Mr. Hampton, is there anything before section 2?

Mr. Hampton: I put my hand up earlier.

Mr. Chairman: I appreciate that.

Mr. Hampton: I wanted to make some general comments and ask a general question of the minister. It impacts on what we do in terms of amendments and it also impacts on how we perceive the bill.

Mr. Chairman: Maybe before you do that, I will have the minister respond to the questions.

Mr. Hampton: My comment is very much along the same lines as Mr. Mackenzie's. Specifically it is this: The Occupational Health and Safety Act includes within it provisions allowing workers to refuse dangerous work. That provision is not restricted to unionized workers only. It is available to workers who work in union settings and workers who work in nonunion settings.

It was my understanding—and I may be corrected; you may have other figures on this—that if you look at who uses that provision, the refusal to work where the worker feels that the work is unsafe, 90 per cent of the people are from unionized workplaces; they are organized. Only 10 per cent who use it are from unorganized workplaces.

Because there has been some research done on this, it is also my understanding that most of the workers who work in nonunion workplaces—in other words, who do not have someone to represent them, to sit down and talk with them and say: "This is what we think the act means. This is how it should be used"—do not even understand the concept of right to refuse. That is my understanding of what the findings have been. Furthermore, those who do understand it are reluctant to use it because they fear eventual employer reprisal.

What I am asking the minister is if he can comment on those. If he can, it seems to me that this has much to say about this bill because our point—we heard it from Canadian Tire store operators, we heard it from representatives of the car dealers and from all sorts of business people as well as from trade unions and other groups; they all said the same thing—is that they consider the legislation to be basically toothless and very easy to evade or avoid.

My point to you would be: If those are the results with the Occupational Health and Safety Act, the only people who can use it are organized workers. Furthermore, many of the unorganized workers do not understand it and are reluctant to use it. How could the case be any different for this Sunday work legislation in a sector which is overwhelmingly not organized? How can we expect it to have any effect in a sector of the economy which is overwhelmingly not organized?

Mr. Chairman: My inclination was to rule that we are dealing with this bill here, but I think you have tied in with it. I think I will ask the minister if he has a comment.

Mr. Mackenzie: I think it is part of the same argument of a very small percentage of working people.

Mr. Chairman: Yes; I appreciate that. But I think that the tradition around here, as I understand it, has been to restrict it to the critics of the two opposition parties to address the comments made by the minister but then to get on with the bill itself. I think you have tied it into the other, and I think I would allow that.



Mr. Philip: We can also tie it in to section 2 if we wanted to. Either way we can still ask those questions.

Mr. Chairman: Yes. I would allow that.

Hon. Mr. Sorbara: I will try and keep my response as brief as possible.

I think the comparison to the right to refuse unsafe work under the Occupational Health and Safety Act is valid to a point; that is, that this right under that act is the empowerment of working people. Similarly, I believe that under this act the section empowers working people to say no to a particular assignment from an employer. But I think beyond that the comparison is not an appropriate one.

The right under Bill 114 is simple and straightforward and, I think, is easily comprehensible by working people in the retail sector. One does not have to analyse the situation to determine whether or not a particular assignment is safe or unsafe. One does not have to take air samples to determine whether or not the air is endangering the lives, health or safety of workers. One just has to determine whether, having been assigned Sunday work, a worker at first instance considers that reasonable.

1750

It is the determination of the retail worker that begins the process. That worker has the absolute right to say, "No, thank you," and the full protection of the law supports him in that refusal and does so up until the time that a referee—should the matter ever go to a referee—would decide otherwise.

It is simple and straightforward, and frankly I think that probably members of the New Democratic Party can understand that more easily than members of the third party because they have a familiarity with ensuring that working people have rights in respect of their workplace.

This province has, over the past 40 years, dealt with the issue of the extent to which there is or is not commercial activity on Sundays. This is the first instance where a government has said, "When we're revisiting that issue we should be considering, as well, affording appropriate protection to working people."

Mr. Mackenzie said that many of the retail workers whom he deals with complain about the fact that working people are being assigned different hours and hours are being reduced from 24 hours to 18 hours. In fact, there are problems beyond that. There are problems of working people being told that no longer will their working day be from 9 a.m. to 5 p.m., but rather their working day will be from 8 p.m. until midnight because the Canadian Tire store has decided to stay open until midnight in that jurisdiction. Under those circumstances a worker generally, if he or she is not a participant in a trade union, has no recourse but to say, "Well, I'll continue to keep my job and I'll work that assignment from 6 p.m. or 4 p.m. until midnight."

What this bill does—

Mr. Mackenzie: Minister, we are dealing with Sunday shopping. The answer is simple: Why do you not let them opt in? Why say a worker has the right to refuse Sunday work, unless he or she is willing to? It is as simple as that.

Hon. Mr. Sorbara: Just let me finish my response. What we are doing in this bill is giving the retail worker the opportunity to say, "No, thank you" to that assignment.

Mr. Mackenzie raised the point about the extent to which it is going to take time for an employment standards officer or a referee to hear the matter. I just want to point out that until such time as that matter is heard, the right is absolute. The worker cannot be dismissed or otherwise dealt with, so his security—his tenure—in that position continues until such time, even if it be a year away, that a referee says, "Well, in my view, having heard all of the evidence, I believe that the assignment is reasonable."

Mr. Mackenzie: Company lawyers are really going to be willing on that one.

Mr. Chairman: Mr. Mackenzie, it is Mr. Hampton's question to the minister; you have to let the minister answer that first.

Hon. Mr. Sorbara: It is only thereafter that the right to refuse becomes qualified. So I think we are moving down the right road. Perhaps the right is not as forceful as the critic from the New Democratic Party would want, but it is important that we give the retail worker some bargaining power—and not only retail workers who may be called upon to work under Bill 113 but retail workers who are now called upon to work on Sunday, and let's admit that there are many of them as well.

Mrs. Cunningham: On a point of personal privilege, Mr. Chairman: I object to the remarks by the minister with regard to the third party. I can certainly speak for myself about the third party and members of the third party, of which I am one. I have had some 14 years in labour relations, and I object. I understand very much the concerns that are being put forth here this afternoon. I understand this bill probably somewhat better than the people who wrote it—

Mr. Ballinger: Boy, aren't you cocky today.

Mr. Mackenzie: She is making a contribution, not just mouthing off.

Mrs. Cunningham: —because I have had to work with people who have been across the table from me as chief negotiator in both union and teacher bargaining arenas.

Interjections.

Mr. Chairman: Mrs. Cunningham is making a point of privilege.

Mrs. Cunningham: So I object, and I wish that the minister would withdraw his comment, because I think it is totally inappropriate and unfair.

Mr. Chairman: Oddly enough, people think point of privilege has the meaning that one would expect from point of privilege, but under the Legislative Assembly Act, it does not have the meaning most of us think it has. I am sure Mr. Sorbara would probably do that, but I do not think it is a point of privilege.

I understand that there are no questions or amendments to the bill in terms of section 1. Mr. Philip is quite correct that under section 2 the whole gamut of what Mr. Hampton and Mr. Mackenzie have been addressing continues to be addressed or questioned.

Mrs. Cunningham: Which we tabled on August 4, you should add.

Mr. Chairman: Yes.

Mrs. Cunningham: On that section. Those questions have been sitting there since August 4.

Mr. Chairman: I do not add anything for anybody, but I would like to ask, if there are no comments, questions or amendments to section 1, that we might deal with section 1 and then we will get on to section 2. Is it dealing with section 1, Mr. Hampton?

Mr. Hampton: No. I merely wanted an opportunity to respond to the minister's comments.

Mr. Chairman: His comments deal with section 2, as Mr. Philip quite clearly pointed out. I just want to clear the decks of section 1. I do not think we have difficulty with that. If we could—

Mrs. Cunningham: I would just like to make a comment on section 1, Mr. Chairman.

Mr. Chairman: Yes.

Mrs. Cunningham: The implications of section 1 were discussed in detail. The minister has assured us that the financial implications of section 1—if I am not correct on this interpretation, I stand to be. When we were asking about premium pay, the inclusion of this particular December 26 in the section under holidays, I think—the part of the bill that talks about the statutory holidays—we automatically know now that in the retail business, for people who work or do not work on December 26 because of this new legislation, premium pay will be mandatory. It is not now, but it will be mandatory.

December 26 is not a statutory holiday. If people choose to stay home, they may or may not be given pay at the discretion of their employer or the employers or whatever and they may be given straight hourly time, but with this one, the implications are that time and a half is the law. Is that correct?

Hon. Mr. Sorbara: That is right. All of the provisions dealing with pay under the Employment Standards Act will, once this act is passed, apply to December 26, commonly known as Boxing Day.

While I have the floor, Mr. Chairman: On the matter of privilege raised by Mrs. Cunningham, I am not trying to cast any doubts on your or your party's commitment to working people. The point I was trying to make is simply that while your party was in government there were a number of pieces of legislation dealing with the regulation of Sunday openings and Sunday closings, and during all that time—

Mr. Chairman: Minister, I do not want to interrupt you but I had ruled that it was not a point of—

Mrs. Cunningham: I think you made your point, Minister. Most of us are here to talk about the future, not the past.

Mr. Chairman: Mrs. Cunningham, I had ruled that it was not a point of privilege and therefore there is nothing to respond to. I am going to interject, Minister. Are we ready to vote for—



Hon. Mr. Sorbara: Why do you not just cut me off, then?

Mr. Chairman: I did.

Section 1 agreed to.

Section 2:

Mr. Chairman: We are now on to section 2. I would again ask are there any comments, questions or amendments to this bill and with reference to which clause?

Mr. Philip: I believe that my colleague Mr. Mackenzie made a number of comments that could be appropriately considered related to section 2. I believe the minister has not had time to respond in depth to his comments. So I would like to hear from the minister.

Mr. Chairman: I would never question your interpretation of what your colleagues wish to do, but I think I am going to ask Mr. Mackenzie to espouse himself. Is that correct, Mr. Mackenzie?

Mr. Mackenzie: Sure. But it is also six o'clock, Mr. Chairman.

Mr. Philip: As a member of the committee—

Mr. Chairman: Let's do it and do it by 6:30.

Mr. Philip: I object, Mr. Chairman. I object to what you are ruling. I have a right as a member of the committee, if another member asks a question that I consider relevant, to expect an answer from the minister and to be interested in getting an answer from the minister.

I simply say that Mr. Mackenzie raised a number of issues and if the minister so wishes—and it is his prerogative to respond—then I would like to give my time until he has responded to the extent that he feels is necessary for Mr. Mackenzie. Then I do have some other questions. I simply do not want to take the floor away from the minister.

Mr. Chairman: All right. If Mr. Mackenzie wishes you to advance that to the minister, that is fine. My only comment was that the member himself is entitled to make that and I thought you were anticipating what he might say.

Mr. Philip: I was making it on behalf of myself, not on behalf of Mr. Mackenzie, and I have a right to do that.

Mr. Chairman: That is fine. I did not read it that way, but that is fine. Mr. Mackenzie has—

Mr. Kanter: There is a rule, I believe, that calls for circulation of amendments. I am just wondering, if either opposition party intends to move any amendments to the bill, whether we might have them circulated.

Mr. Chairman: I asked initially if there were any amendments to the bill. I was told there were none.

Mr. Kanter: I heard that from the government. I did not hear that from the opposition parties.

Mr. Chairman: I am sorry. That is correct.

Mrs. Cunningham: I have to clarify our position. We were expecting the minister to respond to some of our concerns, that the government may have put some amendments forth. In fact, we thought they would have. I am now talking about section 39k, to be specific. The minister responded that he did not have any amendments, so that means we will have to consider some amendments to section 39k specifically. I have been specific to that point. But I did think the government was seriously taking into consideration our concern and certainly responded that way during the first day of hearings on this particular bill.

Mr. Chairman: I appreciate that, Mrs. Cunningham.

Mrs. Cunningham: If you would like the time to think about that—

Mr. Chairman: I had Mr. Philip asking a question of the minister. Mr. Mackenzie has asked to adjourn the debate. We have not yet heard the bell from the House adjourning. That is why I have not responded to it. It would be appreciated, in light of the fact that this is Tuesday and we are not sitting again until next week—

Mr. Ballinger: If it is Tuesday, it must be justice.

Mrs. Cunningham: If we are going to make amendments, we would get them to Mr. Kanter before the end of the week.

Mr. Chairman: If there are to be some, perhaps as a matter of courtesy they could be made available to the chair and to the clerk. Okay?

Mrs. Cunningham: Yes. That would be fine.

Mr. Chairman: Mr. Philip, do you wish to pursue that matter or in light of Mr. Mackenzie's motion, do you wish to—

Mr. Philip: A number of us have a commitment at six o'clock with a meeting in a hotel that is a 10-minute walk from here.

Mr. Chairman: The motion technically is not in order yet, as the House is not adjourned. But it being six of the clock or pretty close—I find the clocks in this place are outrageous; none of them runs.

Interjection: This one is right on.

Mr. Chairman: Is that right? Mr. Mackenzie moves adjournment of the debate. We will adjourn until Monday after routine proceedings.

The committee adjourned at 6:03 p.m.

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J-58

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

RETAIL BUSINESS HOLIDAYS AMENDMENT ACT  
EMPLOYMENT STANDARDS AMENDMENT ACT

MONDAY, JANUARY 16, 1989





STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Cunningham, Dianne E. (London North PC) for Mr. Sterling

Hart, Christine E. (York East L) for Mr. Mahoney

Mackenzie, Bob (Hamilton East NDP) for Mr. Farnan

Neumann, David E. (Brantford L) for Mr. McGuinty

Philip, Ed (Etobicoke-Rexdale NDP) for Mr. Hampton

Roberts, Marietta L. D. (Elgin L) for Mr. Offer

Sola, John (Mississauga East L) for Mr. Polsinelli

Clerk: Deller, Deborah

Staff:

Mifsud, Lucinda, Legislative Counsel

Witness:

From the Ministry of Labour:

Sorbara, Hon. Gregory S., Minister of Labour (York Centre L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, January 16, 1989

The committee met at 3:47 p.m. in room 151.

EMPLOYMENT STANDARDS AMENDMENT ACT  
(continued)

Consideration of Bill 114, An Act to amend the Employment Standards Act.

Mr. Chairman: I recognize a quorum. Mr. Runciman was good enough to tell me that he was speaking in the House, but we had his permission to proceed in the absence of a member representing the Conservative Party.

Section 1 has been carried. Are there any questions or comments or amendments to anything beyond section 1?

Mr. Mackenzie: For the record, I want to point out one of the responses from the Minister of Labour (Mr. Sorbara) to the comments I made at the last session of this committee challenging the delays or outlining the delays that can be possible in having employment standards officers handle the cases, if indeed there were any appeals to employment standards officers.

The minister made the comment—I forget his exact words; I have not read the Hansard—that it really was not a problem because the worker was protected, in effect, until a decision of the employment standards officer had been made on the case. That is at best misleading, simply because the company can still fire him and it is still going to take as long as it takes that employment standards officer to reach that decision on the case.

He then may or may not be reinstated; he may even get his back pay. But an awful lot of people will not even proceed with the appeal to the employment standards branch, particularly in a nonunion plant, when they realize that they can still be fired and there may be a matter of months involved. This is likely to happen in many, many cases to lower-paid employees as well.

I think it is the understanding of it that is at stake here. The minister's comments did not accurately reflect on the comments that I had made or on what actually happens, the fact that the company can still fire the employee and he has to go through the procedure. If the minister is telling me they cannot fire an employee, I would like to know why that is not in the bill but that is not fact.

Hon. Mr. Sorbara: I would just like to respond briefly to that. The act clearly sets out, in the circumstances Mr. Mackenzie describes, that to fire an employee under those circumstances is against the law. It is not a matter—

Mr. Mackenzie: Are you telling us they will not or cannot?

Hon. Mr. Sorbara: I am saying—

Mr. Mackenzie: That matters. A lot of things are against the law.

Hon. Mr. Sorbara: What more could one do, for example, if under a

collective agreement it is against the collective agreement to dismiss under certain circumstances? We find that employers attempt to do that. I do not know what more one could do than to say, under those circumstances the member describes, that it represents a contravention of the law.

If it is a contravention of the law, what do you do if it happens? You can do two things under the way in which we legislate: you can provide a penalty or you can provide more than that; you can provide a right of reinstatement. This act provides both the right of reinstatement and a penalty for acting against the law.

Mr. Mackenzie: That underlines my point and makes your statement misleading at best.

Hon. Mr. Sorbara: I would not say it is misleading. I do not think that is fair.

Mr. Mackenzie: My argument was that there are delays in this process, unless something is done that will speed it up. There is nothing in this bill that indicates any move to speed up the employment standards procedures, and I am simply saying that there is also nothing that prevents the employer from firing the employee—

Hon. Mr. Sorbara: There is. It is—

Mr. Mackenzie: The bill talks about the right to reinstatement, which underlines the very point I am making. It is misleading to say, "That's not really an argument that should be given any weight, because he really has protection until the employment standards officer has dealt with the case," when in fact he does not.

Hon. Mr. Sorbara: Subsection 39i(1) reads as follows: "No employer or person acting on behalf of an employer shall, (a) dismiss or threaten to dismiss an employee...because the employee has refused an assignment of Sunday work that the employee considers unreasonable."

I do not know what more you could do than to say it is against the law to dismiss or threaten to dismiss under those circumstances.

Mr. Mackenzie: Minister, are you missing the point? The argument I made with you is that an additional reason this bill is difficult is the delays we already have under employment standards and the difficulty that gives workers in trying to protect themselves. You said that is not really a factor, because the bill says you cannot do it because it is against the law. It does not matter whether it is against the law. That is the fact we already face.

Hon. Mr. Sorbara: Your point is an important one. You should realize, given the way this act is structured, that it is the employer who will want quickly to get to a referee for a determination, because as long as there is no determination, it represents a contravention of the law for which full reimbursement and/or reinstatement is exigible against the employer.

What employer in his right mind will say, "I'll just let the clock run"? If he checks with his lawyer, he knows that he has violated the law, that the referee would very likely order full back pay—and for that back pay the employer will have had no service out of the employee—and reinstatement. So if you let it run a year, that is a year's back pay; if you let it run two years, it is two years' back pay.



Mr. Mackenzie: Unless he has taken employment in the meantime, which is very likely if it is a long time, and unless he wants to get rid of the employee. The longer he can make it run, the more likely it is that the employee will leave.

The real problem, as the minister knows, is that people are not going to take advantage of it. In this particular trade, as the figures now seem to indicate, probably 90 per cent of them are not organized. It is just a dead issue where they do not have the strength of the union to back them up on such an appeal anyhow. They do not use it, just as they do not use the safety and health right to refuse, where they are not organized.

The point I was making was that your comments did not accurately reflect what happens.

Mr. Chairman: You raised a point that may need clarification. If the employee takes other employment, there is nothing, as I read it in the bill, that says that can be used as mitigation of the back pay the employer might have to pay at some stage down the line if it was found he was wrong. Is that right?

Hon. Mr. Sorbara: Your point is very well taken, Mr. Chairman. There is no section in the act that requires the referee to look at mitigating the damages claimed. There is nothing to prevent the referee from doing that. It would be a matter of determination by the referee. But once again you are right: there is no requirement to mitigate and no requirement for a referee to look at mitigation.

Mr. Mackenzie: But he is unlikely to be paid twice, and the minister knows that well too, when a referee is making a decision.

Mr. Chairman: I should not have interjected, but it just clicked.

Are there any comments, questions or amendments to this bill and, if so, to which clause? Could members indicate that to me?

Mr. Mackenzie: There are no amendments whatsoever. The position that we are taking on this particular bill is exactly the same position that the Ontario Federation of Labour has now taken, as it indicated very clearly in its press conference the other day, that the bill is almost totally illusory and without any real value and is not likely to be amendable in a way that would effectively fix it. We do not intend to move any amendments to it at all.

Mr. Chairman: All right. Seeing no comments or questions on this bill, shall section 2 carry?

Mr. Mackenzie: For the record, I want to put my vote against each of these sections.

Mr. Chairman: Would you like a recorded vote then?

Mr. Mackenzie: Yes, I would.

Mr. Chairman: All right. We will go back again.

Miss Roberts: Mr. Chairman, Mr. Runciman is not here.

Mr. Chairman: No, Mr. Runciman met me in the hall. He indicated that he had to speak in the House.

Miss Roberts: It is all right if we continue dealing with all—

Mr. Chairman: He indicated that we could continue in his absence.

Interjection.

Mr. Chairman: The clerk raises a question: Did Mr. Runciman know we were going to vote on the bill? My understanding of what he said to me was that he had to speak in the House and we were entitled to proceed with the committee hearings in his absence.

Mr. Neumann: Just to be on the safe side, perhaps you could—

Mr. Chairman: Here is Mr. Sterling now. Mr. Sterling, are you subbing?

Mr. Sterling: No, I am not.

Clerk of the Committee: He is a member of the committee.

Mr. Chairman: Could you just come in for a second, because we have run into a bit of a quandary?

Mr. Sterling: I cannot. I am on estimates in the other room.

Miss Roberts: I know it is possible for us to determine this, but—

Mr. Chairman: I told you what Mr. Runciman told me but, in fairness, I would not want to misinterpret it and find out that we have a problem. So if it is agreeable to all members, we will recess for 10 minutes to allow someone to find that out.

Clerk of the Committee: I will go.

Mr. Chairman: The clerk can find that out.

The committee recessed at 3:58 p.m.

1610

Mr. Chairman: We are back in session. We were in the midst of voting on the bill. I should again make the statement: Are there any comments, questions or amendments to this bill and, if so, to which clause?

Mr. Philip: I have some questions on section 2.

Mr. Chairman: All right, Mr. Philip.

Mr. Philip: Did we carry section 1?

Mr. Chairman: We carried section 1 last sitting.

Mr. Philip: It is appropriate to ask questions on section 2 of the minister this time. The various labour delegations and representatives of employees had a press conference. They claimed that in their opinion employees throughout the province were opposed to this bill, that there was nothing redeeming about it and indeed that it was so bad it was not even worth amending. Can you name one labour group, representatives of workers, that has actually endorsed this piece of so-called labour legislation?

Mr. Chairman: I would not want to interfere, but which part of section 2 are you referring to? All of it?

Mr. Philip: Section 2 that is supposed to protect employees in the retail business establishments.

Mr. Chairman: All right.

Hon. Mr. Sorbara: It is a good question. Having determined that we, as a government, were going to be moving to introduce amendments to the Retail Business Holidays Act, we committed ourselves to presenting amendments to the Employment Standards Act to provide protection to retail workers. Obviously, under those circumstances, as Minister of Labour, I invited representatives of the two largest retail workers' unions as well as representatives of the Ontario Federation of Labour to discuss what in their view would be appropriate protections. Those consultations were brief.

I was advised that the OFL and its constituent members opposed the government's proposal to incorporate a degree of local choice in the question of amending the Retail Business Holidays Act. As a result, they were not prepared to discuss or support any initiative that might provide protection of whatever sort to workers in the retail industry. I understood that position and I understand it today. The point I am trying to make is simply that I think the opposition expressed by the OFL and of the unions to these provisions would be of a different sort and their comments would be of a different kind, were this bill standing alone now in the Legislature.

Mr. Philip: It was not clear from the minister's statements whether he consulted with the two large employee groups prior to introducing the bill in the House.

Hon. Mr. Sorbara: Yes, prior to introducing the bill in the House, certainly.

Mr. Philip: Because the statement by the groups when the retail wholesale workers' union was on the stage—maybe Mr. Mackenzie has a list of who was there. Yes. Ken Signoretti from the OFL, Bob McKay from the Retail, Wholesale and Department Store Union, Tom Kukovica from the United Food and Commercial Workers and also a lawyer from the United Steelworkers of America. He claimed that unlike previous governments and previous ministers of labour who had a practice of consulting with them prior to introducing legislation, you in fact did not consult with them. They were afraid that this might be a pattern of how you intended to operate as Minister of Labour. Now you are saying that you consulted with them.

Hon. Mr. Sorbara: I could, if I had my diary here, give you the date, several months before the bill was introduced, when I met with Bill Reno and others in my office to hear their views on what they thought would be an appropriate way to afford protection for workers. I was simply told at that time—

Mr. Mackenzie: That is not generic to the whole issue, though.

Hon. Mr. Sorbara: I am sorry?

Mr. Mackenzie: They saw nothing of your planning in terms of this bill specifically.

Hon. Mr. Sorbara: No, but with respect, they told me, in short, to



forget it, that they would not co-operate on any attempt to draft any piece of legislation in any form, because of their stated, on-the-record, passed-by-convention opposition to what they thought the government was doing in Bill 113. I understood that. I said, "Okay, but if you change your mind, let me know."

Mr. Philip: We will certainly send the Hansard to them and ask their opinions on it.

I am not a lawyer, but the other point was made was that you could have built in a justice and dignity clause that exists in other types of legislation and that right now, with the onus on the employer to prove or justify his action—instead, what you have done is build into the bill that the employee in fact has to justify before the tribunal his actions in refusing to work on a Sunday and that the actions of the employer were reasonable. The shoe should have been put on the other foot, so to speak, if you really wanted labour legislation rather than employer legislation.

Hon. Mr. Sorbara: Well, I am a lawyer, but I do not quite understand the reference to a justice and dignity clause. I would say, though, that the onus here has been placed on the employer because the right to refuse an assignment of Sunday work is deemed to be unreasonable until such time as a referee determines otherwise, because in subsection 39i(1) the reference is to an assignment of Sunday work that the employee considers unreasonable.

Mr. Philip: But that does not stop the employer from firing the person.

Hon. Mr. Sorbara: It does. It is against the law for the employer to fire someone. It is a contravention of the act to fire someone who has asserted that right.

Mr. Philip: If they fire the employee, they have got to go through the Employment Standards Act and, therefore, a year down the road, they may in fact find out that he should not have been fired. Why don't you put into it up front that an employee has the right to refuse and that that right is absolute?

Hon. Mr. Sorbara: We have done that.

Mr. Mackenzie: Oh, come on. You are playing games.

Hon. Mr. Sorbara: I am not playing. I am saying that the right is absolute until a referee determines that the assignment is reasonable. That is what the act says. I am not trying to play games with it. It says that the right is absolute.

Subsection 39i(1) says, "No employer or person acting on behalf of an employer shall dismiss or threaten to dismiss an employee"—and do a number of other things—"because the employee has refused an assignment of...work that the employee considers unreasonable."

I do not know how the language could be any clearer. I do not know what more we could do.

Mr. Philip: It could have been clearer if you had defined "reasonable." Of course, that has been left up to the capriciousness of whoever the particular arbitrator happens to be.

Hon. Mr. Sorbara: Under these circumstances the employee, until a

referee decides otherwise, could decide that one hour on one Sunday once a year is unreasonable and stand on those rights. When a referee says, "Sorry, that sounds reasonable to me," after that, then the employee could be dismissed for refusing to work that one hour on that one Sunday once a year, but only then.

Mr. Mackenzie: Once again, if you even look at your own guidelines in terms of reasonableness, the existence of a policy of the employer to rotate staff to avoid inequitable assignment of Sunday work—one hour on a Sunday is not going to apply to that. You have a tendency to oversimplify these arguments, or try to.

The history of the work relationship, including previous requirements respecting Sunday work assignment; the fact that the employer has not made reasonable efforts to hire additional staff—I am a little beyond there, but it is just the argument we are getting, which really is not a very effective one.

1620

Hon. Mr. Sorbara: Can I just go on, Mr. Chairman, to explain a little bit further? Yes, those are statutory criteria that a referee may take into consideration when he or she is charged with the responsibility of making a determination under the act. But remember that the purpose and the objective that we are trying to achieve in respect of this sector are for people who want to be working on Sunday in the retail sector to be working. That is why we have put the onus where it is.

Any assignment of Sunday work gives rise to a right to refuse. The way it is structured allows the people who want to opt out of Sunday work very strong rights to do that. The employer can say, "No, I want you to work Sunday and I am going to take your case to a referee, because I think what I have assigned you is reasonable." Or he can do what is more likely and put together a workforce on Sunday from the workforce that wants to work on Sunday and others who might be interested in working part-time in his or her establishment. That is the way the act is structured.

Mr. Chairman: Are there any comments, questions or amendments to this bill, and if so, to which clause?

Mr. Philip: This is a futile exercise. There is not one employee, one store worker—

Hon. Mr. Sorbara: A feudal exercise?

Mr. Philip: I said "futile." It is a feudal bill, feudal legislation, but it is a futile exercise. The minister must have some intuitive skills and he realizes exactly what kind of bill it is.

To pursue this, there is not one employee in the province who supports this legislation that you say provides them with protection. I say it is a useless bill; it is not worth amending. I am not going to move on the amendments; neither is my colleague Mr. Mackenzie. Take your vote, then, if the Conservatives have some comments, but we are just wasting our time.

Mr. Chairman: Are there any further comments on section 2?

Mrs. Cunningham: We stated when we last met and the minister was

here that we may have some amendments. We have looked seriously at putting forth some amendments, only to discover that they would make the bill even more unclear and more imprecise than it already is. I suppose the bottom line for us is fairness, and part of that fairness is the cost of this whole legislation to the municipality and ultimately to the taxpayers of the province.

We think that in law now, where people have to justify staying home on Sunday when they do not have to be at work on Sunday—when we are looking to the courts to define what is reasonable—we are looking at a situation that is almost impossible to resolve. It ties up cases in courts. Often the person who is on the other end of the request is left waiting for sometimes weeks, months and years before one has a decision.

We think that is exactly what this legislation is. We think it is something that is being waved about; and, again, people will expect that they will be treated fairly, when they are being discouraged from working out relationships with their employers, as they do now.

I would think the segments of society that would be most upset are people who are not in the retail business and who have to work on Sundays now, who are not perceived to be protected—because that is all this is, a perception. I think the Ontario citizens should be very much concerned about another level of bureaucracy—in spite of what the minister states—that will be required in order to make this particular piece of legislation work.

We think it is expensive, personally to people, because the most expensive thing that can happen to us now is to be emotionally involved in the workplace in arguments with employers. It is very difficult, especially for single-parent families and women who are expected to raise their children. This is what this bill is all about. More importantly, it is difficult for people when it takes a long time to come up with some conclusions and it is expensive for everyone in dollars and cents as well.

We are not in support of this legislation but it is impossible to amend it, because one would not even know where to begin. So we have given it a go and we have tried to get some responses. We have tested it in different retail sectors, meaning that we have given it to groups of employees to get their response, and they are just so adamantly opposed to it, both employers and employees, that we are unable to come up with any positive suggestions for amendments.

We are just very much opposed to Bill 114, which of course was written because of the disastrous effects that will probably take place as a result of Bill 113. It does not stand alone.

Mr. Kanter: I have been inspired by some of the comments of the other parties, but certainly with respect to Mrs. Cunningham's comments, I have some difficulty understanding them, because as I understand the structure of the bill, it is designed to encourage the parties to agree. It is only in the exceptional case or the case of disagreement that there would be reference to government personnel.

I am wondering if I might ask the minister, with respect to the effectiveness of the legislation in protecting workers, is there not an analogous situation in law now? Is this not similar to the right of a worker to refuse work that he or she considers unsafe? Is this right not exercised by unorganized employees from time to time? Do we have some experience as to the



success ratio or the fact that this right has been exercised by workers, unorganized as well as organized, from time to time? Is there an analogy that shows this kind of framework works in the contemporary labour force in Ontario?

Hon. Mr. Sorbara: There is an analogy, but I would not want to take it too far. The right to refuse unsafe work applies to every worker within the Ontario jurisdiction but requires there to be at least the perception of a dangerous situation. That is a fundamental right. That right to refuse unsafe work is fundamental to health and safety in Ontario.

I think the analogy breaks down, though, as you pursue it further. Notwithstanding that you are right that it is exercised both in the unionized workplace and in the nonunionized workplace, I think Mr. Mackenzie will tell you it is exercised far more frequently in the unionized workplace because workers in the unionized workplace are more sensitive and have a better understanding of what their rights are as working people in this province.

Mr. Kanter: Perhaps some of the more dangerous occupations are more heavily unionized.

Hon. Mr. Sorbara: No. There are a lot of unsafe workplaces that we have to get at that are unorganized. The reason why I would not want to take the analogy too far is that the right to refuse unsafe work is a right designed to protect the health and safety of the worker and, once exercised, requires remedies immediately. The inspector comes in and remedies the situation and the worker can go back to work. It is not there to provide that worker a benefit. It is there to protect him and give him the right to withdraw.

Mr. Chairman: I do not want to interject, but I think we are getting pretty far afield here.

Hon. Mr. Sorbara: No, because I am going to bring it back now to this bill here, if I might. I am going to do it very quickly.

This right is designed to provide a benefit, in a sense, an opportunity to stay away from work one day a week. The vast majority of retail workers are nonunion retail workers. This bill provides something like a one-section or one-clause collective agreement that says, "You can't fire me if I decide that I don't want to work on Sunday unless a referee has made a determination that my preference not to work on Sunday is unreasonable."

Mr. Mackenzie: I do not know why the minister shies away from the analogy. There is some validity to it. As a matter of fact, rather than a benefit, I would see this bill as being something that is there, once again like safety and health, for protection of a worker if he does refuse.

Taking a paragraph out of the Ontario Federation of Labour brief, the question is, will it work, especially in the 90 per cent plus of establishments that are nonunion? An instructive benchmark is the right to refuse, which has now existed for more than 10 years in the Occupational Health and Safety Act. Only a third of Canadian workers are organized. In that act, a worker can refuse to perform work that he or she judges to be unsafe.

To what extent has that right been exercised by nonunion workers? In the past year, the right to refuse was exercised on some 450 occasions, but more than 90 per cent of those cases were in unionized establishments even though only a third of the workforce is unionized. Take a look at the retail trade,

where only 10 per cent is organized with probably not the sophistication there and where they are going to be looking at it as a threat to their job if they refuse Sunday work. The tragedy of the bill is that it is not going to be used, period.

1630

Mr. Runciman: I want to indicate that I think it proper that the minister did not support the position Mr. Kanter was trying to take with respect to this legislation.

Mr. Kanter: We are very independent-minded thinkers on this side.

Interjection:: Not voters.

Mr. Runciman: Not voters, that is right.

I have to agree with the views that have just been expressed with respect to unorganized labour. I think we are talking about people who, for the most part, are going to be on the lower side of the income spectrum. We are talking about a lot of single-parent women, people who do not have a lot of skills. To suggest that they are going to take on their employers in situations like this, I do not know whether to cry or laugh, really, to suggest that is going to be the case. It is ludicrous. There is no question about it.

We saw the response to this of the Premier (Mr. Peterson) in question period last week, when he said something like one third of Ontario workers are now working on Sundays. That does not really touch on this concern. We have a lot of people, as we all know—policemen, firemen, people involved in continuous operations in the chemical industry, etc.—who have to work on Sundays. This is a totally different situation.

I want to reinforce what my colleague has said. This legislation is a bad piece of business. We do not want to be associated or identified with it in any way, shape or form by perhaps suggesting amendments to same. Mr. Chairman, we are going to expedite matters, I guess you could say, by simply voting against this legislation in its entirety.

Mr. Chairman: Are there any further comments or are we ready to vote?

Hon. Mr. Sorbara: Can I just comment on Mr. Runciman's speech? To your great surprise, I just want to let the committee know that—

Mr. Chairman: You have heard of Newton's law.

Hon. Mr. Sorbara: I know. I just want to let the committee know that among the provisions in the Employment Standards Act, this is a rather simple, straightforward, clear-cut, understandable provision. You might not agree with it, but what it does is clear on paper. There are thousands and thousands and thousands of working people—

Interjection.

Hon. Mr. Sorbara: Hold on a second. There are thousands and thousands of working people who do not belong to trade unions, who call upon the Ministry of Labour and the employment standards branch to help them enforce rights which in some instances are far more complex. That branch is a

busy branch. Working people tend to know what their rights are and they tend to use the act this bill will amend. We cannot give precise estimates as to how many people will exercise their rights under this act, but suffice it to say that our experience with the working people of this province calling upon the branch to assist them in enforcing rights under that act is very vibrant.

Where a worker decides he or she needs the assistance of this right, I think he or she will find that the right is there, it works, and employment standards officers and, if necessary, referees are there to enforce the bill.

Mr. Philip: As a last comment on this bill, I can say that I have every faith that this bill will make you as popular with store employees as your workers' compensation bill has made you with injured workers.

Mr. Chairman: All right. Do you wish a recorded vote?

Mr. Philip: Yes.

The committee divided on whether sections 2 to 4, inclusive, should stand as part of the bill, which was agreed to on the following vote:

Ayes

Chiarelli, Hart, Kanter, Neumann, Roberts, Sola.

Nays

Cunningham, Mackenzie, Philip, Runciman.

Ayes 6; nays 4.

The committee divided on whether the title should stand as part of the bill, which was agreed to on the same vote.

The committee divided on whether the bill should be reported to the House, which was agreed to on the same vote.

Mr. Chairman: I want to thank all of you for your co-operation throughout these rather lengthy hearings.

Hon. Mr. Sorbara: Congratulations to you all.

Mr. Chairman: I have seen a lot of different faces come and go in this committee.

We stand adjourned until tomorrow after routine proceedings. The subcommittee will meet first and then we will have a meeting of the committee itself.

Mr. Philip: Do people on the subcommittee know about that?

Mr. Chairman: They will be made aware of it by the clerk. We wish to discuss the question of ordering of business, but the committee itself will meet shortly thereafter to confirm that or disavow it or whatever else it wants to do.

Mr. Kanter: Could I just inquire— and this does not involve the minister—is it your expectation that the committee will actually have a business meeting tomorrow? Is that your expectation?



Hon. Mr. Sorbara: Are you talking to me?

Mr. Kanter: No, I am not talking to you. I am saying this was not in confidence; the minister may go.

Mr. Chairman: I thought that was what I said. You mean afterwards?

Mr. Kanter: After the subcommittee.

Mr. Chairman: The only reason I would want the full committee afterwards would be to ratify or to discuss, if necessary, what the subcommittee has agreed upon.

Mr. Kanter: I may have a time problem. I assumed that we would finish this today.

Mr. Chairman: I do not believe there will be any votes. There might be.

Mr. Philip: Mr. Chairman, I really enjoyed being a member of the committee.

Mr. Chairman: Thank you.

Mr. Philip: I have not been a member of this committee since I chaired it in 1977, so I thank you very much; and if you think I gave you a hard time, you should have seen the hard time Margaret Campbell used to give me when I was sitting there.

The committee adjourned at 4:38 p.m.

Lacking nos. 59-63





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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

POLICE AND SHERIFFS STATUTE LAW AMENDMENT ACT

MONDAY, MARCH 6, 1989

Morning Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitution:

Faubert, Frank (Scarborough-Ellesmere L) for Mr. Chiarelli

Clerk: Deller, Deborah

Witnesses:

From the Ministry of the Attorney General:

Offer, Steven, Parliamentary Assistant to the Attorney General (Mississauga North L)

Peebles, D. R., Assistant Deputy Attorney General, Courts Administration

Veskimets, Matt M., Director, Provincial Court Services Branch

Jewell, Fred, Sheriff, Goderich

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Monday, March 6, 1989

The committee met at 10:14 a.m. in room 228.

POLICE AND SHERIFFS STATUTE LAW AMENDMENT ACT

Consideration of Bill 187, An Act to amend certain Acts as they relate to Police and Sheriffs.

Mr. Chairman: I recognize a quorum. Mr. Offer, would you be good enough to introduce the members of staff who are here? Then I understand there is an opening statement which will be read by the assistant deputy minister. You should all have a copy before you, by the way.

Before I do that, I would like to introduce you to Denise Lamontagne. She is a clerk of the Quebec National Assembly visiting with us, trying to find out what we are up to.

Mr. Mahoney: If you find out will you tell us?

Mr. Chairman: Caroline Schmidt is a co-op student from University of Waterloo who is assisting Deborah, as if Deborah needs assistance; of course you know who Deborah is.

MINISTRY OF THE ATTORNEY GENERAL

Mr. Offer: I am pleased to be here on behalf of Mr. Scott for this consideration of Bill 187.

We have with us today Ross Peebles, who is the assistant deputy attorney general, courts administration. As we know, he oversees the full operation of the courts of the province. We also have Matt Veskimets who is the director of the provincial court services branch. I would in this briefing session indicate that—

Mr. Chairman: If I could just interrupt, perhaps you could tell us which of those gentleman is which.

Mr. Offer: Mr. Peebles is to my immediate right and Mr. Veskimets, who again is the director of the provincial court services branch, is to Mr. Peebles's right. He is particularly knowledgeable on questions surrounding the whole question of the operation of security within the provincial courts.

We also have Fred Jewell. He is the sheriff from Goderich and he is on secondment to the head office of the Ministry of the Attorney General. I would suggest to members of the committee that any questions with respect to the particular functioning of sheriffs might best be placed with Mr. Jewell.

Having said that, I would like to read to you a brief statement concerning the background of Bill 187. I believe the clerk has distributed this to all members.



Mr. Chairman: Is there any difficulty with Mr. Offer reading it as opposed to the assistant deputy minister?

Mr. Sterling: No.

Mr. Chairman: Seeing no difficulty, proceed.

Mr. Offer: Thank you very much for that warm show of support.

Mr. Chairman: We were going to take a vote, but we were afraid to.

Mr. Offer: At present, court is held in more than 240 different locations throughout Ontario. Arrangements have to be made to transport prisoners to and from each of these locations and to ensure their secure custody while they are either in the holding cells or in the courtroom. In addition, provision must be made for the security of the judiciary and the other users of the court facilities.

While the Municipal Act assigns to the police forces that have filed charges the responsibility for transporting prisoners to and from court, there is no legislation which deals with the provision of security services within courthouses. The result is that many different practices have grown up throughout the province.

In some areas, the police are now providing virtually all security services. They guard prisoners in the holding cells, they escort them from the holding cells to the courtroom and they remain with them until the court has dealt with the case. The police also provide general security in the court facility. In other locations, these duties are shared in some fashion with the local sheriff. Bill 187 will assign all of these in-court security functions to the local police.

In attempting to address the court security problem, the government considered three options:

1. It could accept the current division of responsibilities that now exists and recognize that uniformity would not be achieved.
2. It could establish a separate force to be responsible for all aspects of court security that would be equipped, trained and managed by the province.
3. It could assign the responsibility to the local police.

It is the government's view that the status quo is not a viable option. It is understandably difficult to justify that some police forces should provide services that others are not required to provide, in spite of the fact that all municipalities which have their own police forces receive the same level of financial support from the province. Increasingly, those municipalities providing security began to question the equity of the current system and in a few cases actually threatened to withdraw from the provision of security service.

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The option of establishing a separate, provincially operated security force was considered viable, although it posed significant operational problems. First, it would be difficult to manage such a force so that the

security available on any particular day would be tailored to the nature of the cases being brought before the courts. Second, management and administrative support for such a force would duplicate resources and expertise that already exist at the municipal level. This duplication of effort would impose a significant additional cost on the taxpayers.

The government believes, for several reasons, that the local police are in the best position to assume responsibility for court security. First, as I have already explained, the police are already responsible for transporting those held in custody to and from the courthouse. This means that the police will know which cases are coming before the courts and what level of security is appropriate in the circumstances.

Second, many police forces are already providing court security; for them no changes will be required as a result of this proposed legislation.

Third, there are normally many police officers in the criminal courts, principally to act as witnesses. With some co-ordination these officers could augment the normal security force while they are in the courthouse. Moreover, the police are in a position to respond quickly to a requirement for additional officers if the need should arise.

I should explain that in 1981 the Attorney General of the day entered into an agreement respecting court security with the Board of Commissioners of Police of Metropolitan Toronto. Under that agreement, the province undertook to pay the cost of providing 50 special constables who are employed by the Metropolitan Toronto Police. These special constables provide security in the provincial courts in Metro Toronto. Since Bill 187 will assign this responsibility to the police, the legislation will terminate this special agreement, which is unique to Metro Toronto.

I should point out that under the new legislation, sheriffs will retain their traditional responsibility for the maintenance of decorum within courtrooms.

I should also point out that the bill does not require police authorities to use fully trained and sworn police officers to provide court security. Many police forces now use civilian officers to handle court security duties. This bill will not require them to change that practice.

In addition to dealing with court security, the bill does provide for the sheriffs to receive assistance from the police in the enforcement of court orders in civil proceedings in cases where a breach of the peace is anticipated. The bill also proposes that warrants of committal and warrants for the arrest of individuals shall be directed to the police for enforcement.

Those are, by way of opening comments, some of the background to the legislation. As I have indicated, we have the assistant deputy minister, we have the director of provincial court services and we have a sheriff from Goderich on secondment to the ministry present to respond to any questions and provide any clarification or expansion of these points that members of the committee may deem necessary.

Mr. Chairman: Before we proceed, are there any questions on what Mr. Offer has presented to us? It seems pretty straightforward.

The purpose this morning is to receive briefings, so perhaps the next person can continue, whoever that is.

Mr. Offer: It is my understanding that basically there was some query by the research officer into background information on Bill 187 which was provided by the officials from the ministry. In terms of briefing, that is indeed what the bill is about. I do not know if there are any further comments that members from the ministry would like to make. If not, are there any questions?

Mr. Chairman: Okay, I will open it up to questions.

Mr. Polsinelli: Before questions, it being a very short bill, perhaps we could have a clause-by-clause briefing by ministry officials.

Mr. Chairman: I have no difficulty with that.

Mr. Polsinelli: There are only three or four sections.

Mr. Chairman: Does the committee agree with that?

Mr. Offer: I have no problem in providing that clause-by-clause.

Mr. Chairman: Mr. Hampton. Is this dealing with the point Mr. Polsinelli has raised?

Mr. Hampton: I do not want to disagree with what Mr. Polsinelli has proposed, but from my reading over the weekend it seems to me there is a history to the court security argument that goes back at least 10 years. Mr. Offer refers to some of that history, although he does not mention some of the names of the people in it. Before we move to what Mr. Polsinelli has proposed, I would like to ask some questions on some of that history. Mr. Offer has presented us with a five-page summary, but my understanding is the history is a bit more complicated than can be presented in five pages.

Mr. Chairman: All right; perhaps we will proceed to that first and then go to the clause-by-clause overview.

Mr. Sterling: If I could just differ slightly, I would like to go ahead with what Mr. Polsinelli has suggested, just to have a brief sense as to what the bill is about, because basically some of the questions I may ask in a historical context may relate to something that is within the bill. Therefore I think, if you do not mind—

Mr. Hampton: No, I do not mind.

Mr. Chairman: We have unanimous consent, then, to proceed the way Mr. Polsinelli suggests and we will come back to you, Mr. Hampton. Would you proceed, Mr. Offer.

Mr. Offer: Subsection 1(1) of the bill is the main provision dealing with court security. It amends the Police Act to assign responsibility for court security to local police forces or the Ontario Provincial Police in areas where the OPP is responsible for policing. Police now provide a large portion of court security needs and have the appropriate training and equipment to perform these functions.



I know this is dealing a little bit outside the particular clause, but the amendments are consistent with the announcement of March 7, 1985, by the then Minister of Municipal Affairs and Housing that the province would include funds for court security in the grants given to municipalities. Since then an extra sum of \$3 per household has been included in the police grants paid to municipalities under section 2b of the Ontario Unconditional Grants Act.

Mr. Sterling: Is that statement somewhere?

Mr. Offer: No, it is not; but it is part of the compendium and we could provide that.

Mr. Sterling: Yes, I would like to see the actual statement.

Mr. Offer: Of Mr. —

Mr. Sterling: Timbrell, I believe it was?

Mr. Offer: Yes, Mr. Timbrell.

Mr. Sterling: Sorry, go ahead.

Mr. Offer: On that point, we do have a copy of the statement by the Honourable Dennis Timbrell.

Mr. Chairman: We will have to get copies for the members.

Mr. Offer: We will have copies provided.

Subsection 1(2) of the bill protects the provincial government from liability arising from any agreement relating to court security.

Mr. Sterling: Can we question as we go through the sections of the bill?

Subsection 1(1) places the responsibility on a municipality. Does that mean the municipality that houses the courthouse facility?

Mr. Offer: Yes.

Mr. Sterling: Therefore, even though that courthouse facility is dealing with cases that fall outside of the municipality, the municipality which houses a courthouse facility gets stuck with all of the security.

Mr. Offer: That is a correct reading.

Mr. Sterling: Okay; thank you.

Mr. Chairman: But normally, at least in regions, it is a regional police force, so it is really——

Mr. Sterling: Not in Ottawa-Carleton.

Mr. Chairman: I see. Okay.

Mr. Offer: If I may proceed, subsections 2(2) and 2(3) of the bill repeal provisions of the Sheriffs Act that have been interpreted by some people as suggesting the sheriff has some responsibility for court security. To go back to subsection 2(1) of the bill, it deals with the general responsibility for the enforcement of orders in civil proceedings. It re-enacts section 2 of the Sheriffs Act. Subsection 2(1) of the Sheriffs Act will continue to assign primary responsibility for the enforcement of orders in civil proceedings to the sheriff.

Subsection 2(2) of the Sheriffs Act is a new provision. What this provision does is codify the sheriff's common law authority to require the assistance of the police in the enforcement of civil orders. This was a common law authority which has now been codified and will be found under subsection 2(2).

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Mr. Sterling: Could I just interrupt again?

Mr. Offer: Yes.

Mr. Sterling: In family court, who is going to be primarily responsible for enforcing security?

Mr. Offer: The sheriff.

Mr. Sterling: The sheriff?

Mr. Offer: Yes. I am sorry, the policing is—What was the question?

Mr. Sterling: I said in family court—

Mr. Offer: In the courthouse it would be the police.

Mr. Sterling: The courthouse is often a place different from the regular courthouse.

Mr. Offer: Yes.

Mr. Sterling: So it is going to be the sheriff?

Mr. Offer: No, it would be the police.

Mr. Sterling: There are two different kinds of cases that occur there.

Mr. Offer: That is correct.

Mr. Sterling: There are cases which are civil in nature and there are cases which are not civil in nature. What happens when there is a mixed bag?

Mr. Offer: The legislation is clear; it states that the decision as to how the courts are to be secured will rest with the police.

Mr. Chairman: I think what Mr. Sterling is asking is the question of execution as referred to here: Does this section require a sheriff to execute, let's say an order for support—something that is of a civil nature as opposed to a criminal nature?

Mr. Veskimets: With respect to support orders or maintenance orders, those would be enforceable through the support and custody enforcement program. There is separate legislation for the enforcement of those particular orders.

Mr. Sterling: Do you consider that a civil matter or do you consider that other than a civil matter?

Mr. Veskimets: It is a civil matter.

Mr. Sterling: So therefore the sheriff would be responsible for security in those cases.

Mr. Veskimets: No, not for security. We are talking about two separate issues. One is the enforcement of the orders themselves. The security of the courthouse, where the court proceedings take place, would be the responsibility of the police.

Mr. Sterling: That is fine.

Mr. Chairman: Could I just ask one question there? The bill uses the word "order." Is that large enough to include judgements?

Mr. Veskimets: Yes.

Mr. Chairman: Any further questions, Mr. Sterling? All right; if you would like to proceed, Mr. Offer?

Mr. Offer: Thank you very much. If I might move down to section 3 of the bill, it makes some complementary amendments to the Children's Law Reform Act to ensure the police are responsible for enforcing orders requiring a child to be located and delivered to the person entitled to custody of the child.

Subsection 4(1) of the bill provides that this responsibility applies to provincial offences orders, as well as orders in civil proceedings. Subsection 4(2) of the bill amends the Courts of Justice Act, 1984, to make clear that the police are responsible for enforcing warrants of committal, arrest warrants and other orders requiring persons to be apprehended or taken into custody.

Mr. Polsinelli: I am sorry. What did you say subsection 4(1) did?

Mr. Offer: It provides that the responsibility applies to provincial offence orders as well as orders in civil proceedings.

Mr. Polsinelli: Subsection 4(1) talks about prohibition against photography at court hearings. I could be totally out to lunch on this.

Mr. Offer: If I just might have a moment.



Mr. Chairman: In dealing with bills, I think it would be helpful if the bill being considered by the committee might be set up in such a way that the full wording of the section that is being amended were inserted someplace in the material, because it is difficult to understand what—

Mr. Polsinelli: I think what we need is a copy of the Sheriffs Act and a copy of the Police Act.

Mr. Chairman: Yes, I agree.

Mr. Polsinelli: Without those, we will not be able to look at the sections.

Mr. Chairman: We can get that for the present; but I think in future, and I have raised this with the clerk, it would be helpful to have the existing section on one side of the page with the amendments demonstrating how they change it. Otherwise it becomes almost incomprehensible to try to understand what is going on. Can we get copies of the Police Act and the Sheriffs Act?

Mr. Polsinelli: I think what we will need is a copy of each bill that is being amended. Mr. Kanter has pointed out that four bills are being amended.

Mr. Chairman: I can tell you that I did suggest to the clerk that with our word processing facilities we should be able to create a bill that would have on one side of the page the act that is being amended to make it more comprehensible to people when they are on clause-by-clause consideration.

Mr. Offer: In response to the query made by Mr. Polsinelli—you were particularly looking at the prohibition against photography at court hearings? I think that was what you were—

Mr. Polsinelli: No, I was asking what subsection 4(1) of the bill did.

Mr. Offer: Oh, I am sorry, I just did not understand; that is why we are getting a copy of the particular section.

Mr. Chairman: Okay, we are getting copies of the relevant sections. That would seem to complete—unless you would like Mr. Offer to explain what sections 5 and 6 mean, Mr. Polsinelli.

Mr. Polsinelli: Would you talk about subsection 4(2) as well?

Mr. Offer: Yes; I think I indicated that subsection 4(2) does amend the Courts of Justice Act, 1984, to make it clear that the police are responsible for enforcing warrants of committal, arrest warrants and other orders which require persons to be apprehended or taken into custody.

I think, just by way of clarification on the initial point—and I think it is important that we have copies of the bills that are referred to in this legislation—in terms of the amendment to subsection 108(3) of the Courts of Justice Act, and in particular the prohibition against photography of court hearings, that phraseology is now found within that section. All we are doing is adding a clause or a line afterwards.

Mr. Chairman: They are adding a separate section, which is 152a.

Mr. Offer: I think that will become very clear—

Mr. Polsinelli: What does that section do?

Mr. Chairman: It now requires police officers to execute the warrants for arrest and any other orders requiring persons to be apprehended or taken into custody. It gives them the sole responsibility for it. I guess sheriffs had it at one time. That was common law without any codification in an act, is that right?

Mr. Offer: That is right.

Mr. Chairman: Is there any doubt about that statement?

Mr. McGuinty: I have a general question which may be related to this point. If it is not, please listen anyway.

The concerns I have had expressed to me by policemen in my own municipality, the regional municipality of Ottawa-Carleton, and by all the police chiefs there incidentally, are reiterated in some of the written briefs we have had submitted thus far, and were also voiced just the other day by the chairman of the Ottawa Police Commission.

Their concerns, in the light of what I have heard this morning, are really unfounded. Well maybe their first concern is founded, the one on the basis of the increased cost which will be incurred. That, in my municipality, is in the neighbourhood of \$1 million. I have heard it is in the neighbourhood of \$3 million for Metropolitan Toronto.

Second, they tell me that the kind of activity we are delegating to policemen now is not appropriate for policemen. The analogy they use is that years ago we had police constables patrolling parking meters and enforcing that damned nuisance legislation. They got rid of that and they set up their own parking control officers. The policemen have told me they will be required, by virtue of additional costs here, to take trained policemen off the beat and have them assigned to these duties.

1040

I have taken occasion to sit in courts for three or four hours to do some research for a stand on this. It seems to me that the function provided by the court constable is not something that you could appropriately delegate to a policeman.

I am amazed there should be such widespread misconceptions in this regard. I do not know if this bill has been in the offing for nine months, but there are a lot of misconceptions regarding what it involves. The second last paragraph really allays the concerns, or suggests as unfounded the concerns that have been expressed to me by policemen.

I should point out also that the bill does not require police authorities to use fully trained and sworn police officers to provide court security. In other words, we could end up with a situation such as we have now. In fact, we could have one of the alternatives that was dismissed here as

not viable being implemented. The municipality, under the jurisdiction of a police force, could have a group of, call them what you will, court constables under them, just as the municipality has dog catchers, parking control officers, licence inspectors and so forth.

My point is that I think there are a lot of misconceptions about this. The assumption out there by the policemen with whom I have spoken is that they are going to be required to have fully trained, bona fide policemen. Also, there is the idea that you refer to here as well, and policemen tell me this, that you have court constables and then you have police assistants readily available.

The only justification given to me by police for having policemen in this kind of a job is that you have some older guys who are serving out their time for two or three years. They do not want them in the cars or on the beat, and they kind of serve it out in this manner.

There is a lot of misunderstanding out there about what this involves. None of this is clarified here, to my mind. I cannot read this kind of legalistic goobledgook, so I am a little handicapped, but even if I could I do not see how the concerns that have been expressed there are allayed.

Mr. Offer: If I might respond, and ministry officials might want to make some further response, I take note of the concerns which you have raised and the concerns you have heard, because I too have heard those types of concerns expressed by many people across the province. The principle of the bill is that security within courthouses is best left to the decision of the local police force. They are best able; they are best equipped, they are the professionals in this business. They also, and this should be underscored, are the most knowledgeable of the upcoming cases on a day-to-day basis, which may pose some greater or lesser degree of risk to the security of a courthouse.

That is the principle of this bill, that the decision as to how the courthouse is to be secured rests with the police. I think the confusion or concern, as you wish, is founded on the fact that those who have voiced such concern believe this bill prescribes how that decision is to be made. This bill does not do that. This bill does not say there must be a first-class constable in every courtroom in every courthouse in the province.

This bill just states, in a clear fashion, that the determination as to how the courthouse is to be secured rests with the police. It does not state how the police are to make that decision and what that decision ought to be. I do not know if there are any further comments by ministry officials on that.

Mr. Peebles: I might just mention that I think Ottawa is a good example of where the police are now performing the function pretty well entirely, using a force of people who are trained for security functions but who are not trained in the full range of responsibilities of a sworn police officer. They would not be conversant with all the aspects of policing, but they are certainly trained to the extent of providing court security.

I cannot remember offhand how many officers there are but they are special constables; and they are identifiable in the Ottawa courthouse, for example, as special constables employed by the Ottawa police.

Mr. McGuinty: I want to know about the \$1 million in increased costs that they project. What would that result from?



Mr. Peebles: It is very difficult for me to know what they are expecting will happen. As far as I am concerned, as far as I can observe with my own two eyes and from talking to the sheriff in Ottawa, the extent to which the sheriff now provides any security in the courthouse building is really limited to one sheriff's officer per floor. They basically patrol the corridors and make sure that everybody is quiet outside of the courtrooms. They provide no in-courtroom security; that is already now being provided by the police. It is very difficult for me to confirm or really make an intelligent comment about how they would arrive at that number.

Mr. McGuinty: I appreciate that. Thank you very much.

Mr. Sterling: With regard to the duty that is placed upon the police force of the municipality which houses the courthouse, in your opinion is it any more onerous in this legislation than in the existing common law and statute law now on the books?

Mr. Peebles: I think it depends where you are. If you are in Ottawa I think the answer would have to be no. If you are in one of those locations where the police have not traditionally been doing it, obviously there will be some transfer of responsibility from the sheriff's officers to the police force. The difficulty I have in trying to respond to the question is that the actual practice varies quite significantly from a place like Ottawa to a place where the police are not now providing too much.

If I could just make a comment that would be helpful, the background to this confusion I think stems from—

Mr. Sterling: Before you go into that, I do not believe you are directing yourself to the question I asked. I asked whether Bill 187 would create a greater duty of care on the part of the police if they were sued as a result of an incident in a courtroom—

Mr. Chairman: I am not sure, Mr. Sterling, that that is a question which should be directed to this gentleman. It should probably be directed to legislative counsel. You are really asking for a legal opinion, and I do not think we should put staff in that position. I do not know whether this gentleman is a lawyer.

Mr. Sterling: The Attorney General is responsible for all legal opinion of the government, so presumably I could ask —

Mr. Chairman: Let me inquire. Are you a lawyer?

Mr. Peebles: No, I am not, sir.

Mr. Chairman: Are any of the gentlemen at this table lawyers?

Mr. Offer: It has been said that I have been. Certainly not by any of my previous clients.

Mr. Chairman: I was doing that out of fun, Mr. Offer.

I think that is a legitimate question, Mr. Sterling. Maybe it is a question on which we should get an answer from the Attorney General's department in terms of a legal question, but I do not think it is fair to ask —

Mr. Sterling: The instant duty of care is increased, then the expense will increase as well. That will be, of course, a concern. Many of the members of the committee may recall when a lawyer was actually killed in a courtroom here in Toronto five, or maybe eight years ago. I do not know whether his estate sued the Ontario government or Metropolitan police force or the sheriff. I do not know whether they were successful or not successful in terms of the duty of care that had to be shown. I am somewhat interested in the response to that question.

1050

Mr. Offer: If I may, on the inquiry by Mr. Sterling I think it would be premature at this point to give a response. We will take note of it and ascertain a response to that inquiry.

Mr. Sterling: It is very important, because what it means is that police forces are going to come in here and say, "We need a full-fledged police officer versus a court constable or whatever it might be." That is where the crux of the problem will come out.

My second question deals with the cost of providing services. Presumably each and every sheriff in each courthouse across Ontario has a budget for security. Is that not correct?

Mr. Peebles: Not broken down specifically for security. There are other aspects that the sheriff is responsible for. Where the sheriff is now providing security it is part of a larger allocation. There is some money allocated for security in those places where the police are not now providing it, of course.

Mr. Sterling: Can you provide us with a statement showing what those costs are for each and every area in the province?

Mr. Peebles: I can show where the police are providing security; and where the sheriff is providing security and to what extent in terms of an estimate of the time that the sheriff's officers devote to it. It is extremely rough, in terms of the estimate, because at the moment sheriffs' officers are providing security and taking care of general sort of courtroom decorum, which duty they will maintain so there will not be savings in that respect.

The one area in which there will be savings as a result of the legislation, is only to the extent sheriffs' officers are actually escorting prisoners from the holding cells, for example, and staying with them in the courtroom. We can provide a rough estimate, by county, of the hours that are devoted to that function. I would be happy to provide that.

Mr. Sterling: You are expecting some savings, I would presume, over the next year or two if this legislation goes through?

Mr. Peebles: It is a difficult call. We are under a lot of pressure from the judiciary to provide better services across a broader spectrum than just security. They would like, for example, two officers, whom we cannot always provide at the moment, to be with the jury. I am not expecting we will have actual money savings. I am expecting to be able to plug some gaps that now exist by virtue of the police taking up some additional responsibilities.

Mr. Sterling: I would like to see you try to provide us with the cost on this, the cost of security that the sheriffs are now supplying in other locations.

Mr. Faubert: I would like to clarify something in relation to Metropolitan Toronto, if I might. It is my understanding that Metropolitan Toronto receives from the province funding for 50 special court constables administered by, hired by and supervised by the Metropolitan Toronto Police. Under this act, that agreement terminates. Therefore, I take it the provincial funding in that amount terminates. Is that correct?

Mr. Peebles: That is right.

Mr. Faubert: Do they revert, then, to the additional \$3 a household or do they have both?

Mr. Peebles: They have that in addition to the payments that were made under the terms of that contract.

Mr. Faubert: So they are receiving about \$2.8 million or something under the \$3 a household?

Mr. Peebles: Yes, it is about \$2.58 million, something like that, under the \$3 per household grant they were receiving.

Mr. Faubert: Plus the costs of—

Mr. Peebles: Plus the \$1.8 million under the contract.

Mr. Faubert: So they would lose that \$1.8 million. Is that where they are finding that additional cost?

Mr. Peebles: That is one place. The other place is that they are not now providing security at the district courthouse or in the Supreme Court, and they will have to take up those responsibilities. Frankly, that is where they will have more costs rather than the loss of payments under the contract.

Mr. Faubert: But they assume a cost, I guess, taking up the difference between \$1.5 million plus assigning first-class constables or whatever. I have no basis of how they have come up with their costing and I just wonder if you have any more than that.

Mr. Peebles: Not at all, sir.

Mr. Faubert: They have not justified their cost; they have just come back with this amount?

Mr. Peebles: Yes.

Mr. Faubert: It may be something to ask them. Thank you.

Mr. Hampton: If I could, I would like to get into some more general questions—

Mr. Chairman: We are beyond the clause-by-clause explanation; that has been completed, so go ahead.



Mr. Hampton: Good. I am not sure who can answer these questions, but I guess we will start with Mr. Offer and then we can move along.

Mr. Offer, you have said the principle of this bill is to assign responsibility for court security in a clear way to the local police force, is that correct; and where there is no local municipal police force then to the Ontario Provincial Police?

Mr. Offer: That is what is stated in the bill, yes.

Mr. Hampton: It seems to me that what I have heard from both municipalities and from police forces is that what is missing from this bill is some mention of financial responsibility. It is one thing to say, "You are responsible for doing X." It is another thing to say, "And here is the cost-sharing program" or "Here is the costing scheme for doing X." Where is that?

Mr. Offer: The response—

Mr. Hampton: I do not see it in the bill, so where is it?

Mr. Offer: The response to your question was made in 1985, March 7 as I recall, with announcement that the grant would be increased by \$3 per household, the \$3 to go towards court security as a permanent solution to the issue which had previously been dealt with on an ad hoc basis. It was done in 1985 in terms of the financial aspect of it, but if you are looking for that specifically in this bill you will not find that in this bill.

Mr. Hampton: I have read the 1985 statement, and the very best I can say is that it is pretty vague. As I read the Zuber report, for example, Mr. Zuber says the responsibility for provision of court security is a matter of continuing debate. He says the police have always been called upon to supplement and strengthen court security when it is required, and they often do this. When you have had situations of dangerous prisoners or large numbers of prisoners, or where there have been threats or disturbances or these things are likely to occur, the police have been called upon.

He also points out, and I can refer as well to it as well, Judge Howland's statement in 1988 at the opening of the courts where he says that due to a number of security problems in the courts the police have had to be called in more.

Now I could read the 1985 statement you refer to as simply covering those kinds of things. I do not read that 1985 statement as saying, "This is your money so that you can provide security at all times."

Mr. Offer: In response to that question, maybe I can just refer to the statement you previously brought forward. It states:

"As many of you know, court security has become a special issue in major urban centres. In 1984, the Attorney General received requests for funding from many municipalities. Because of the growing number of requests, our ministry"—and I insert that at that point in time "our ministry" meant the Ministry of Municipal Affairs and Housing—"will incorporate funds for these purposes into the police per household grant. This is a permanent solution to what has been an increasing problem and will replace the special payments which have been made to a limited number of municipalities."

That was a part of an omnibus type of statement made at that point in time. This legislation does —

Mr. Sterling: It does not say that it will stop the responsibility that the sheriff now has for security. It just says it takes care of the ad hoc payments.

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Mr. Offer: In this particular case, I think Mr. Sterling will be very well aware that there were many courtrooms, most courtrooms at that point, in which the police were responsible for the security of that courtroom. There were some ad hoc types of arrangements which had been entered into; I think notably by the region of Peel, and I think London was involved, and Metropolitan Toronto, of course, was involved. The decision made at that point in time was clearly designed to end that type of arrangement.

This bill before you, again does not deal with the financial aspect. You will not find that in this bill. This bill deals in principle with clarifying, very much so, that security for the courts remains with the police; the decision as to that remains with the police. The bill does not prescribe how the police are to exercise that responsibility, what that decision is to be. All it states is that the decision on court security rests with the local police force.

In terms of your comment—made I think with respect to the Zuber matter—I do not know if you wish to get into that or want to follow that up.

Mr. Hampton: We will in due course.

Mr. Sterling: Did they cut any ad hoc payments at that time?

Mr. Peebles: The ones that were being paid to London and Peel. Peel was just a onetime payment anyway.

Mr. Sterling: So they did take some action in 1985. Everybody interpreted that as being the action that Timbrell was talking about.

Mr. Peebles: Yes.

Mr. Hampton: If you construe what Mr. Timbrell said in 1985 as saying that this \$3 payment means that the police are now responsible for court security, then why on page 4 of your statement do you refer to the continuing ad hoc situation that went on in Toronto; that is, "In 1981 the Attorney General of the day entered into an agreement respecting court security with the Board of Commissioners of Police of Metropolitan Toronto." That seems to be an ad hoc thing in addition to the 1985 thing, which leads me to believe that the 1985 \$3 special grant was not an all-encompassing statement indicating, "This is the way it shall be done."

Mr. Offer: To respond to your inquiry, I think it is clear that it was felt by the ministry that the statement made by Mr. Timbrell was clear enough and that there would not be anything further required. As it turns out, and you have cited the Metro matter, it became evident that legislation was required in order to clarify that statement of 1985. That is why we are here today.

Mr. Hampton: I have a question about that \$3 payment. The \$3 was paid in 1985 and it has been paid since. Even if we just assume an average inflation rate of five per cent, the \$3 you paid in 1985 is basically probably worth about \$2 now.

Mr. Offer: Are you asking for a response?

Mr. Hampton: Yes. If over four years you had had a five per cent inflation rate each year and it compounds—

Mr. Polsinelli: If I could answer that: If you look at the increase of the unconditional grants in 1985, if the unconditional police grant in 1985 was \$47 the percentage increases since then would have been based on \$47. Once the additional \$3 was tacked on to that, bringing it to \$50, then the percentage increases in 1986, 1987 and 1988 would be based on that \$50 figure. So that \$3 figure would have been receiving the percentage increase every year as part of the increase in unconditional grants.

Mr. Chairman: Except this year.

Mr. Polsinelli: Except this year. So that argument —

Mr. Hampton: This year, the year in which you propose make this a blanket responsibility, the grants are not going to increase to cover that.

Mr. Polsinelli: But they have been increasing since 1985.

Mr. Offer: Your question was: "Suppose that in 1985 it was \$3. Subsequently, in terms of inflation and everything else, would that have gone down?" I think the response is that each year there has been a percentage increase which would negate that particular concern.

Mr. Hampton: Except this year.

Mr. Offer: Except this year; yes.

Mr. Hampton: There are about three other things I do not see here and that I would like to see. Again, as I look at the Zuber report, on page 180 Mr. Justice Zuber refers to a report that was apparently done in 1978, the Pukacz report, which recommended that the Ontario government protective services administered by the Ontario Provincial Police be designated to provide court security officers, information officers and attendants for all courts; and that where police officers were performing these functions they should be replaced by the protective service or by specially trained, uniformed civilian staff in the smaller centres. It then goes on to talk about the work the police should do to supplement this.

That was studied in 1978. I understand, from reading Judge Howland's statement, that in 1987 the Ministry of the Attorney General and the municipality of Metropolitan Toronto got into an argument as to who was to bear the cost of court security in Toronto. That actually went to court, but it was settled out of court.

But tied in with that I gather, the Ministry of the Attorney General established the Anderson committee. I am just reading from Mr. Justice Howland's remarks:



"During the year General W. A. B. Anderson was retained to make a survey of the security problems throughout the province. It is understood that he submitted a report early in the fall"—I take this to be the fall of 1987—"recommending possible alternative courses of action. One alternative was the creation of a provincial force to provide security. The other involved the use of existing police forces." Do you know of that study?

Mr. Offer: If I may respond: I think you brought up two points. One was the option of a provincially run security force, and the second point was based on the whole question of the contract with Metro Toronto.

Mr. Hampton: I am not interested in those right now. I am interested first of all in this study by General Anderson. Do you know of that study?

Mr. Peebles: Yes, Mr. Hampton. We commissioned General Anderson to do the study.

Mr. Hampton: It would seem that this study bears pretty much on what we are talking about here. It would seem that it was set up to study specifically what we are talking about here.

Mr. Peebles: It is the precursor of the legislation which is now before you.

Mr. Hampton: Why do we not have that report or study before us?

If I read what Mr. Justice Howland says, I would think the general must have done a survey and come to some conclusions about court security around the province.

Mr. Peebles: Essentially, General Anderson's job was to chair an interministerial committee of all the people who were interested. That included the Solicitor General (Mrs. Smith) and representatives from the Ministry of Community and Social Services, which does some court escorting of young offenders, the Ministry of Municipal Affairs, our ministry, Treasury and Management Board of Cabinet. I think that is probably the group.

They did not really break any new ground. What they attempted to do was set out for the government some policy options, very much as Mr. Offer has this morning. They tried to assess the impact of following any of those options so the government could make a decision on how it wished to proceed. It is on the basis of that and the ministry's own assessment of that report that this legislation has emerged.

Mr. Hampton: Yet I gather we are not going to see that report.

Mr. Peebles: I think that is part of what would be protected by cabinet confidentiality.

Mr. Sterling: I have a copy of it if you want it, Howard.

Mr. Hampton: I guess cabinet is not too confidential these days.

Mr. Faubert: No, he got it before.

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Mr. Hampton: I want to go back to your statement of earlier today, Mr. Offer, because you say in your second-last paragraph, "The bill does not require police authorities to use fully trained and sworn police officers to provide court security."

I gather the implication of that is that a municipal police force may wish to create, within its own police force, a security group.

Mr. Offer: The options are available to the particular police force. I take it that it is a given that when we talk about the local police force we are also referring, without stating it, to the Ontario Provincial Police in areas where there is not a municipal police force. The options available to them are options they may wish to devise, and it is only limited by their imaginations.

Mr. Hampton: I take it, then, municipalities will have the legal responsibility to provide court security, and they will also carry the financial responsibility.

Mr. Offer: That is correct.

Mr. Hampton: I think you know what the municipalities and municipal police forces are saying. They are saying that the \$3 grant, even if it has been increased, is not sufficient to do this job. That is basically their argument, right? You have heard it; I have heard it.

Mr. Offer: As I indicated earlier to Mr. McGuinty's leadoff question, that is certainly a concern which we have heard. We have gone on to say, however, that the bill establishes the principle that the local police forces are responsible for the determination of court security. It does not prescribe what that security is or what their decision should be. In terms of the concerns raised, it may be that some of those concerns are based on the premise that there must be, for instance, first-class constables in every courthouse in every courtroom in the province, and this bill does not say that.

Mr. Hampton: Would you agree with me, though, that the police and the municipal officials in each locality where you have court facilities are going to be put in the situation where they have to decide how much of their police budget they will spend on community policing and how much of their police budget they will spend on court security? Do you agree that will be the tradeoff they will have to make?

Mr. Offer: I do not know if it is a tradeoff. I think these types of decisions are probably made all the time. In many localities throughout the province the police now provide security for the courthouse, so I do not know, in terms of its being novel—

Mr. Hampton: I am not disagreeing that police may already be in that situation. I am simply saying that the general situation that will flow out of this is that the local police force will be placed in the situation of saying, "How much of our budget do we spend on community policing and how much do we spend on security?"

Mr. Offer: I do not really want to speak on behalf of the negotiating process that takes place, save for the fact that I believe that in the negotiation the police take a look at the wide range of functions they are to provide to a particular community. If courthouse security happens to be one of those functions then it is taken into account, but certainly I cannot comment in terms of being a party to the negotiation.

Mr. Hampton: As I read Mr. Justice Howland's statements over the last two years on the opening of the courts, in each year he expresses real concern, not only as to who is responsible for court security but as to the adequacy of court security. Do you follow? Do you agree with my statement there, that as I read Mr. Justice Howland's comments in his report on the opening of the courts, in both 1988 and 1989, he speaks not only of the need for security and the need to decide who is responsible for court security but also about the adequacy of court security?

Mr. Offer: Yes, I think that is a fair reading.

Mr. Hampton: On the one hand when I read your statement I hear you saying, "The police do not have to hire first-class constables to do this job."

Mr. Offer: To be clear, I think my statement was that this bill does not prescribe how the police are to make their decision. They do not have to assign. It is not mandatory in this legislation to assign a first-class constable to a courthouse; that is within their discretion.

Mr. Hampton: I think the implication I got out of your last paragraph—and I will read it again: "The bill does not require police authorities to use fully trained and sworn police officers to provide court security." Okay? That is on page 5, your second-last paragraph.

Mr. Offer: I have found that second-last paragraph, Mr. Hampton.

Mr. Hampton: Okay. But what I hear Mr. Chief Justice Howland saying in his statements on the opening of the courts in the last two years is that the adequacy of court security—the training of the people who provide court security—has to be good. They have to be well-trained people. They have to be trained in security. Who is going to pay for that training?

Mr. Offer: I think you raised two points. You finished off once more with the financial aspect of this bill; and you commented in terms of principle on the type of security our courthouses are going to receive.

Dealing with the principle of it, the answer to your question is: Who is best able to provide that function for the judges, for the people who take part in proceedings in a courtroom? We looked at certain options, and we indicated we felt the municipal police forces or the Ontario Provincial Police in those areas are best able. They are best equipped, they are the professionals, they have the greatest degree of training and they have the knowledge as to what types of cases are coming before the court in terms of what might pose a more serious risk on one day than on another day.

To respond to your question: The police, at first hand, are best able to do it. There is no other force or organization that is better able to provide the type of security which I think you say we should provide.



Again, in terms of the financial aspect you will not find that in the legislation. That was funded through an increase of \$3 per household in the unconditional grants from 1985 onwards. It was—and let's not forget it— an annualized amount that has been paid each and every year and it is designed to meet that particular aspect of policing.

Third—not mentioned in your question—was that in many courthouses across the province the police are now providing that function and have been providing that function. For those courtrooms, those courthouses in those districts, this bill will not have that type of impact.

Mr. Hampton: I go back to Mr. Timbrell's statement in 1985. As I look at page 2 of this statement, at the bottom he says: "The increased police grant rate will assist municipalities with some of the more recent additional costs they have experienced in fulfilling their responsibilities for the provision of protective services."

Then he says on page 3, "In the past few years, in response to specific problems, court security payments have been made on an ad hoc basis by the Ministry of the Attorney General to a few municipalities."

Then he goes on to say, "And, with increased financial pressures at the municipal level, we have been receiving many requests from mayors and chiefs of police to extend funding to provide uniformed police in the courts and to assist in the transfer and supervision of prisoners."

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What I get out of that is, first, that the additional police grant was to cover the cost of transfer and supervision of prisoners. All right? That is one thing that grant was to cover.

The second thing, and you may be right, is that it was to provide some funding to assist with court security, yet after 1985 the government continued ad hoc payments to various municipalities. As you state in your own statement, there continues an ad hoc situation with the municipality of Metropolitan Toronto.

It seems to me that what happened in 1985 does not cover what is proposed in this bill. That statement by Mr. Timbrell cannot be construed as saying that it covers all aspects of court security. It says, "We're giving you more money because we recognize you have to cover the cost of transferring prisoners. We're giving you more money because we recognize that in some cases you have to cover court security." Yet the ministry continued its ad hoc situation. It does not mention anything about training people in security.

I will give you an example. The people who provide security in this building have special training. They are trained by the Ontario Provincial Police in security. It is training which is different from being a police officer. I do not see anything in this bill that talks about proper training for court security. I do not see anything in Mr. Timbrell's statement that talks about covering the cost of training people so they can provide adequate court security.

Then when I read Judge Howland's statement he talks very explicitly about the need for adequate security. I see a bill which says, "You shall be responsible for court security;" but I do not see any of the other bread-and-butter issues like training and the cost of training covered in this. To simply say that this is now the responsibility of the police force, to me does not address the issues that Mr. Justice Howland has raised in the last two years. I would suggest we will hear from the municipalities a little later on that it does not address their questions either.

Maybe these things are addressed in the Anderson report; we do not know that. Maybe we should all see the Anderson report so we can find out about the nuts and bolts. I feel very uncomfortable passing a bill that makes a broad statement when we are denied a look at the nuts and bolts which make the legislation necessary. Yet we have the Chief Justice of Ontario saying, "These are the nuts and bolts." We have the municipalities and municipal police forces saying, "These are the nuts and bolts." Yet the report which apparently covers the nuts and bolts we are not allowed to look at.

I wonder if you can enlighten me on some of this.

Mr. Peebles: Perhaps I can help a little, Mr. Hampton. The difficulty in trying to carry on a discussion around this issue is that the actual situation varies enormously.

Mr. Hampton: Judge Howland acknowledges that. That is one of the things that bothered him immensely.

Mr. Peebles: He is not bothered immensely all over the place. He is only bothered specifically in a few places. Clearly, the places that trouble him the most are the places where he perceives the situation to be the least well-addressed at the moment.

I am just making that comment because it does make it very difficult to respond in a general way when the pattern of practice is so very different. If you go to a place where the police are now providing more or less everything it might help the committee to understand the general lay of the land. I think it is pretty safe to say that in practically all places the police are providing security in the provincial courts, the provincial criminal courts certainly.

Mr. Hampton: Some kind of security; but the level varies, right?

Mr. Peebles: The level varies; but then the level probably ought to vary. That is another thing that makes it difficult to have an even-ground discussion, because if it is a sleepy day in the summer and there are couple of people involved in provincial offences cases, you do not need the same security as you do if there is a high profile criminal trial that involves many witnesses and that sort of thing.

The other comment I might make involves the matter of training. A difficulty which arises in leaving the people in the sheriff's office to provide this type of security in the places where we now are doing it that way is that they tend to be people who are not as well trained as one might like. That has to be tempered by the fact that in many cases the people the sheriff hires are former policemen and people who do have some training, but it is a bit spotty and it depends on whom the sheriff can put his hands on to provide the service.

Passing it over to the local police would seem to be a way of ensuring there are trained people to do this. In the places where the police are doing it with special constables—and that is the pattern, for example, in Metropolitan Toronto at the old city hall, in all the provincial courts, in Ottawa, London and quite a number of places where the police have hired auxiliary officers. They are trained in the areas of restraint and general security that you would find appropriate to a courthouse application.

Mr. Hampton: Judge Howland, in his 1988 statement, refers—

Mr. Chairman: You keep reducing the Chief Justice to a lower—

Mr. Hampton: I am sorry, Chief Justice Howland.

Mr. Chairman: I think, if the Chief Justice ever gets around to reading Hansard he might want to know that at least one of the members of the bar recognizes him as Chief Justice.

Mr. Hampton: If I can respond to that, I think he would be delighted that some members here are showing some concern with this issue, and I think that he might not be as concerned about how he, in particular, is being addressed as with what the issue is and how the issue is being addressed.

In his 1988 report, Chief Justice Howland refers to the situation in Metropolitan Toronto, and then he says at the bottom of page 12, referring to General Anderson's study: "The report has not yet been made public. Such surveys have their role, but as in the case of Brampton, some situations are so urgent that they demand immediate action. Such a situation is the old city hall, where the lives of the judiciary, the bar and the public are at risk from day to day."

I get the impression from this that Chief Justice Howland is not happy with the special constable situation at old city hall.

Mr. Chairman: I do not think that is a fair question to ask this gentleman. None of us can determine what was in the mind of the Chief Justice when he made that statement. He was talking about Brampton.

Mr. Hampton: No, he was talking about the old city hall; he says that the lives of the judiciary are at stake at old city hall.

Mr. Chairman: Mr. Sterling has a supplementary. I think I am going to let him slide in with that supplementary, and then we will move to the other members. You have asked a number of questions and we will come back to you.

Mr. Sterling: With regard to the special constables, which I believe you are trying to encourage local police forces to hire, what kind of training are you or the Solicitor General providing for these people? Is there a centralized training program in place?

Mr. Peebles: There is the police college.

Mr. Chairman: Mr. Sterling, I wonder if you could speak up a bit, or maybe we could have a little more volume. Mr. Farnan is having some difficulty hearing you.



Mr. Sterling: I was just wondering if there was in fact any proactive role on the part of the Ministry of the Solicitor General to provide the kind of training we are talking about that is going to be needed for these security officers.

Mr. Peebles: Not specifically related to Bill 187.

Mr. Sterling: Although that was one of the recommendations of Anderson in terms of what he suggested. Anderson also recommends that you immediately implement a program to upgrade the physical security of courthouses. Has that been done?

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Mr. Peebles: As you can imagine, that is a long-term proposition. We are working our way through the Attorney General's priority list as quickly as funds allow and we are trying to make improvements. For example in Brampton, which Mr. Hampton just mentioned, we have work going on right now to fix up the security arrangements in that building. It will be finished in I guess another month or so. We are working on the worst of them and we will get through the whole list as quickly as we can.

Mr. Sterling: Have you provided guidelines minimum levels required for court security? Are there guidelines that exist now?

Mr. Peebles: There are not and we do not intend to provide them.

Mr. Sterling: You do or do not?

Mr. Peebles: Do not; primarily because any guideline you strike is likely to be overkill on the one hand and insufficient on the other. You have to tailor the level of security to the kind of work that is going on in the courthouse. If it is a civil trial between General Motors and IBM, for example, it hardly requires any security at all. If you are talking about a high-profile criminal trial, it may require a good bit more than one might prescribe for a sort of an average day-to-day kind of a situation.

One of the things the police are very good at is consulting their own internal security and intelligence net and knowing from day to day what cases they are bringing into court and whether there is a perceived special risk involved. Even now that is very true at old city hall. They do adjust the levels of security, depending on that kind of assessment.

Mr. Sterling: But General Anderson recommends that you and the Solicitor General put forward a set of guidelines. What you are doing here is dumping the responsibility on municipal police forces and then washing your hands of the whole matter. It would seem to me the municipal police forces could use the expertise of some kind of joint effort in terms of providing guidelines.

Mr. Chairman: Is that a question, Mr. Sterling?

Mr. Sterling: I am just pointing that out.

Have you established with the police forces the costs they are now incurring to provide court security and what it will cost them to meet your standards? I guess since you do not have any standards there are no cost

estimates possible from your point of view. I expect we will hear from the police forces with regard to what they say this bill will dump on them in terms of costs in the future, but you have no idea of the increased costs that police forces are anticipating with regard to this bill?

Mr. Offer: Because this bill does not contain any standards it becomes an impossibility to make that determination; the police are the ones who are going to be responsible for that determination.

Mr. Sterling: Therefore we can believe everything they tell us this afternoon about the increased costs; because you are not saying, "The standards are here," you are saying, "Set your own standards." Therefore if the police come in and tell us it is going to cost them that much more to meet the requirements of Bill 187, I guess we have to take their word for it; is that what you are telling us?

Mr. Offer: What we can do is refer to the bill to see whether the bill makes it mandatory for a first-class constable to be in every courtroom in every courthouse in the province. This does not do that. I do not want to anticipate what we might be hearing in the upcoming days, but I think we can be assured that this particular piece of legislation only indicates that the decision as to how the courthouses are to be secured rests with the police and does not prescribe how the police are to do it or what decision is to be made in that regard.

Mr. Chairman: Before we continue, I want to get the feeling of the committee. We have deputations coming in at two o'clock this afternoon. Is it the wish of the committee that we continue until noon and then adjourn, or should we continue to 12:30 and then adjourn, or one o'clock and then adjourn? I have four more people, and certainly I am going to give you wide latitude, Mr. Sterling, because the other members have had that as well. Can I get some feeling on that: 12:30 p.m. or 12 o'clock? I am hearing 12 o'clock. There seems to be unanimous consent for 12 o'clock.

Mr. Kanter: Why do we not go until 12:30 p.m.?

Mr. Chairman: I am now hearing 12 and a half. Do I hear a one? All right, Mr. Sterling, go ahead.

Mr. Sterling: I am surprised. Mr. McGuinty, the member for Ottawa South, was relating to us this morning the misunderstanding by police forces of what this bill does or does not do. If Mr. McGuinty had an opportunity to read the Anderson report, which this legislation is based on, it not only recommends to the government certain action but it also recommends certain procedures be taken in implementing that action.

What it says in the Anderson report is that you create legislation but you also take some responsibility for the cost formula and provide some leadership in providing security across the province.

Evidently what the government has chosen to do here is take General Anderson's recommendations with regard to implementing responsibility, but it does not seem to want to take the responsibility for setting standards or being involved in the cost formula.

I think that is the problem we are faced with in regard to policing. It is understandable that confusion is reigning at this point in time, because there is not going to be any provincial standard with regard to the level of security. There are no recommendations being made by the Attorney General or the Solicitor General as to what minimum levels there should be. There is no interest on their part, as far as I can determine from what I have been told, in the cost of providing those particular services; that is going to be the responsibility of the local municipality.

Therefore, in my view, it is the implementation part that is the weakness in terms of the legislation. There does not seem to be any concern whether it is going to cost \$3 per household or \$12 per household, and you have no idea whether it will cost that in order to undertake court security.

Do you have any idea of the cost per household to undertake court security?

Mr. Peebles: Again, it depends where you are. If you are in Ottawa, I would guess—and it is just a guess—not very much, because the police are now in there. They are doing more or less everything that needs to be done. If you are in some place that has not traditionally been doing it, obviously it would cost more than that.

How that plays out, I think, will largely depend on what cases are coming to trial. Obviously, if there were large, difficult cases, it may require more than if there were not. Any estimate one might put is bound to be speculative in the abstract. You would only know when you see what is coming.

Mr. Sterling: I guess what we are asking police forces to do with Bill 187 is to pick up the bill, read the bill in terms of the responsibility they are taking on, and then make their call as to whether they need a first-class constable in each and every courtroom or they need a special constable, or they need a retired commissioner or whatever else they would put in. We are asking them to make that judgement in each and every case. That is notwithstanding what Anderson recommends in his report.

Mr. Kanter: Some of my questions relate in a general sense to some of those raised by Mr. Hampton in terms of the principle of the bill. I am also interested in how other jurisdictions deal with this problem, because I presume there is a similar problem generally.

The first principle of the bill, as I understand it, is that court security is a police responsibility. That seems to make sense to me. You have said they are the people best able to deal with it, better able to deal with it than sheriffs or anybody else.

Do you have any information, or could you obtain any information in fairly short order, as to whether this is the pattern in other jurisdictions? The jurisdictions I would be particularly interested in would be places like the province of Quebec or the province of British Columbia which have large urban centres, as well as many smaller court centres. Would you have any information?

1140

Mr. Chairman: I caution you at the outset that we had agreed there would be no travelling on this committee.



Mr. Kanter: I have no travel in mind. I am just interested in any information that might be available.

Mr. Peebles: There should be no difficulty in getting that information. I am not sure whether we have it available in the office or whether we would have to phone around.

In British Columbia, for example, just because you mentioned that jurisdiction, I happen to know that the sheriff's officers provide court security. They have decided to opt for the second of the various options Mr. Offer referred to earlier. I would guess it varies across the spectrum, because these things always do.

Mr. Kanter: I guess my supplementary question really depends on the answer to the first question. If there are jurisdictions where the police have the responsibility, I would be interested in any information on financial arrangements. Is this something borne by the police through their regular budgetary sources; is it provincial grants or local taxes?

I can certainly see an argument that police have a duty to police that which they find in their jurisdiction. If they have a gold mine in their area, or a bank or something of a high security risk, they may have different costs than other neighbouring police forces. If there are other jurisdictions where the police are responsible for court security, what are the financial arrangements? I think those are the two major concerns that have been raised in connection with the bill.

Mr. Offer: In response to your question about the other jurisdictions, we will see what type of information we can compile in terms of other provinces and how they provide this type of security. We will be doing that in short order.

Mr. Kanter: I am not suggesting we have to be exactly uniform or in lockstep with other provinces; we may be able to come up with a better arrangement. I would be interested if in a summary sort of way we could look at how jurisdictions similar to ours handle this problem. Obviously, the situation is different in Ontario than other provinces, but there are probably more similarities between us and Quebec or BC than Prince Edward Island, just to take an example at the other end of the spectrum. I think that would be helpful for myself and possibly other members of the committee.

Mr. Chairman: Before we proceed, I have just checked with Mr. Sterling and I gather that it is agreeable to all parties here that when we start in the morning, if we do not have representatives from all parties we can start. Agreed? We are going to have delegations before us, and rather than delay them for whatever reason—there could be situations where something may come up where we do not have a member from each party. I would like unanimous consent that we can proceed in that situation.

Mr. Hampton: Is Mr. Sterling coming back?

Mr. Chairman: I spoke to him and he is in agreement. He will be back at two o'clock.

Mr. Hampton: I would feel more comfortable dealing with that when all the members of the committee are here.

Mr. Chairman: I just spoke to Mr. Sterling and Mr. Sterling is in agreement with that. His colleague is nodding his head that that is the case, so I am asking for unanimous consent of the committee that we deal with it in that way.

Mr. Hampton: On the basis that Mr. Sterling says okay, we will go along with that.

Mr. Chairman: Okay, agreed.

The second item I would like to clarify is that when we get into the delegation aspect it would be my suggestion, and I would like to get unanimous consent on this, that the amount of time allocated to each delegation be equally divided among the three caucuses, so we ensure that everybody has equal time but we also keep within the framework of the hour or half hour or whatever we have allocated to these people. Can I have unanimous consent to that effect as well? Okay, unanimous consent on that.

Mr. Chairman: Mr. Mahoney is next, but I am going to move to Mr. Farnan, in fairness, to give him an opportunity. Then we will come back to Mr. Mahoney and then we will go to Mr. Hampton if time permits.

Mr. Farnan: This will be very brief, just two short questions.

From what I heard this morning, would you recognize that the poor state of the physical plant in the courthouses actually adds to the cost of providing security?

Mr. Chairman: I am not sure we should put staff in the category of making a value judgement as to whether or not there is a poor state in the courthouses. That is really a policy issue. However, I think—

Mr. Farnan: That is a generally accepted fact.

Mr. Chairman: I think if you want that answer from Mr. Offer, perhaps he will give it; but I would not put that on staff, I do not think that is right.

Mr. Offer: No. In terms of the question posed, I think we are dealing in Bill 187 with something which is related yet very much distinct. We are talking about the personnel required to maintain security in the courthouse.

In terms of the facility, that is of course a separate issue, but I think you will be well aware that the Attorney General has taken it upon himself, along with staff in the ministry, to take a look at, investigate, analyse and examine the state of the facilities across the province. The minister, for the first time in the history of the Ministry of the Attorney General, has indicated a list of priorities in terms of renovation and in terms of construction.

He certainly publicized that a number of years ago, so that all persons who have some concern with this, who have some involvement with this issue, are able to see where they stand in terms of priorities. I think that was an extremely important investigation, it was an extremely important announcement and I think that it bodes well for the future.

Mr. Farnan: Not being a lawyer I perhaps do not understand the subtle distinctions you are drawing with regard to the purpose of this bill. When you say that it deals with the personnel involved in security, my feeling is that the municipalities and the police forces will be concerned with the actual cost. The police and the municipalities, taking those responsibilities seriously, will want to set what would be good standards of security or acceptable standards of security.

In my view, having an inadequate physical plant is a very vital factor in keeping the costs of that security down. If the province is providing us with a poor physical plant—and that is the case in many of the courts; it is well documented—then you are, in fact, significantly increasing the cost to the municipality. I would certainly challenge the interpretation of Mr. Offer.

Again from my perspective, what I hear this morning is basically an extension of the concept of the municipal option. We are saying to the municipalities, "You will provide the security." Again, it appears to me that municipalities must be looking at this and saying: "What can we provide for \$3 per household?" If they provide anything over and above that what are they doing? They are hitting the taxpayers for a level of service they believe is necessary, but the province refuses to be a partner in determining what that level of service is.

Related to that is the question of whether this is not an unsatisfactory method. When the industrial or commercial tax base differs so radically from one area to another, the government is simply saying, "You will have a level of security in your area relative to the industrial and commercial tax base or the general wealth of the area in question?"

1150

Mr. Offer: I would like to respond by saying there was just a discussion between Mr. Sterling and Mr. Peebles in terms of the bill not having any standard imposed within it, that that is going to be a determination by the particular local police force.

I think in that question-and-answer session it became very clear that one of the reasons there is not such a standard is because of the great flux within the province in terms of the types of cases that are being heard and of the threat to security, which changes on a daily basis. Those are truly the types of decisions that are in many ways exclusively within the knowledge of the local police force. They are there; they are intimately involved and connected with the court system; they know the cases that are coming up. They are there on almost a daily basis. I think that bodes well in terms of this legislation not having such a minimum standard.

Mr. Farnan: Just this last bit for clarification: From the point of view of the government, is it acceptable that policing or security be provided at a level, the cost of which is \$3 per household? That is what you claim is suggested in Mr. Timbrell's March 7, 1985 statement, that this particular grant of \$3 is to provide for this service and it is a permanent solution.

It appears to me that the whole thrust of this bill is that you are saying to the police forces, to whom you are assigning the responsibility, and to the municipalities: "For \$3 you can provide this service." Quite frankly, I believe we all know that it cannot be provided for \$3. That is why you have the backlash of rejection on this particular policy. If this policy were adequately funded, then you would not be receiving the backlash that is out there.



Mr. Offer: I do not agree with the premise of your question. You have to realize that the \$3 add-on was an add-on to an unconditional grant in terms of policing itself. I do not think that any member in this committee or anybody outside this room feels that this bill states that there shall be security up to \$3. That is not what this bill is all about. This bill is about making certain that our courtrooms are secure and that the decision as to how they are made secure is best left to the people who are best able to make that decision. That happens to be the municipal police force.

I do not agree with any of the premises upon which you have based your question.

Mr. Farnan: You do not agree, then, that the court facilities—that the court plant is in a very poor state at the present time?

Mr. Offer: I listened closely to your preamble and that was not part of it. As I indicated on the question which was raised by your colleague Mr. Hampton—I believe it was he—in terms of the facilities that is a matter which has always been looked at by the Ministry of the Attorney General, the whole question of court facilities in terms of renovation has been under ongoing analysis. It is not just building of courthouses, it is renovating that you are talking about.

Certainly there was a priority list of need in terms of courthouses, which was, I believe for the first time, publicly announced by the Ministry of the Attorney General so that all people across this province would be able to see where they stand in relation to all other persons in this province. That was a very necessary, worthwhile exercise. It was a commitment which the ministry takes very, very seriously and looks to complete.

Mr. Farnan: If that was a wrapup statement, I would similarly wrap up by saying —

Mr. Offer: I thought I got wrap up.

Mr. Farnan: I would similarly state that it is very obvious to all concerned, particularly to the major players involved with security, that the condition of the courts vis-à-vis security is at a very low state. This will impose additional pressures on providing security and will impose additional costs. There is nothing in anything that you have said this morning that suggests that an examination will be made as to additional costs provided to particular municipalities because of the poor state of their courts and that there will be funding formulas to recognize that fact.

It is very clear that one facility which is geared to security and another which is not will require different funding formulas. What you are saying is that the responsibility then goes back to the local tax base.

The reality of the matter is that that scenario still remains in the hands of the Attorney General but the implications are being put on to the local municipality. The Attorney General or the government is not picking up that additional cost, which should be examined and I think some recognition should be made on it.

Mr. Chairman: Thank you, Mr. Farnan. Perhaps I could move on to Mr. Mahoney.

Mr. Mahoney: Many of my questions were asked, but I would appreciate a response to concerns of certain municipalities about cost-sharing. Mr. Timbrell's announcement, when it refers to the police grant---this paper came out in 1985---refers to 140 municipalities benefiting. I am assuming that is the regional municipalities and police-delivering municipalities. Out of the 830, there would be 140 that are responsible for police delivery. But when you get into areas like Sudbury or the Sault, for example, I am not clear as to where court services are provided for places like Iron Bridge, Blind River, Thessalon, Goulais Bay; that type of thing.

Mr. Chairman: You have been travelling.

Mr. Mahoney: That is my country. I know it a little bit. I assume that people would attend at court, in that particular part of the world, in Sault St. Marie. If you get up to Mr. Hampton's area, there are probably similar travel distances. Is there any move to a cost-sharing arrangement, that municipalities like the ones I mentioned would perhaps be contributing to the cost of court security?

Mr. Peebles: I think your point goes to the fact that some municipalities will get the grant and do not have courthouses to secure. The counter to that is that, normally, those police forces have longer distances to transport prisoners. It is sort of a tradeoff to some degree. If you do not have a courthouse the chances are you have a longer journey. The grant was intended to deal with both the transport and the security issue.

Mr. Mahoney: The \$3 was designed to cover transport as well?

Mr. Peebles: Yes.

Mr. Mahoney: I read through some of the complaints or concerns that we are going to hear about the costs, not only this afternoon but ongoing. You say you cannot quantify the cost because the standards will be set by the municipality, that is whether or not it uses a constable with some backup civilians or all civilians or special constables. Whatever they determine to use will obviously have an impact on the costs. Has there been any analysis to try to respond to the concerns of these folks, rather than just simply saying, "We're passing it on to you; you determine your own costs"?

1200

Mr. Peebles: As I said earlier, I have difficulty reconciling some of the numbers with what I see and know to be the fact in individual locations. They do not look like numbers I would recognize as being consistent with practice. That is one comment.

The other is that unless budgets were to be given to us for comment, it is difficult to get enough information to really make that kind of assessment. We have not been given this information. I have heard various numbers, mainly through the press and what not; beyond that it is really difficult to say.

Mr. Mahoney: I suppose we can ask the deputies how they handle it at the time. You are suggesting in many municipalities they are already operating on the system that would be implemented under Bill 187 and covering that out of the \$3 grants.

Mr. Peebles: That is why I have difficulty reconciling the numbers I see in the press as a municipality's assessment with what I know to be going on.

Mr. Hampton: I just want to follow up on Mr. Mahoney's line of questioning. The municipalities have brought forward figures. I have received letters from the municipal police authorities, I have received letters from individual municipalities, and they are laying out what they have as an estimate of their costs. Is the Ministry of the Attorney General prepared to put before the committee some estimate or some representative estimate of what the costs might be for major municipalities?

Mr. Offer: In terms of your question, again, as was just indicated, it is difficult to come to grips with those particular estimates put out by the municipalities because we are unaware of the premise upon which those figures are based. All we can do is say not only what this bill does but also what this bill does not do. I would think that, in fairness, it would be most appropriate to request municipalities to provide that type of information.

Mr. Hampton: I think they will, probably this afternoon.

Mr. Offer: Sure, and then maybe we can get into it a little deeper.

Mr. Hampton: It seems to me that if the Ministry of the Attorney General is concerned with court security, you would have some model of what might be required to provide adequate service, shall we say for the district court here in Toronto or for old city hall.

It seems to me we cannot just be dealing with a bunch of fluff. You must have some idea, or you should have some idea of what would be adequate security, say for a representative building like old city hall; and how much it might cost to have a guard trained in security by the OPP for example, such as we have here at the Legislative Building; or what it would cost if we used first-class constables all the time.

For the ministry to suggest this shall now be the responsibility of the municipalities, without providing this committee with some idea of what representative costs might be or what might be adequate security, suggests to me the problem is simply being sloughed off on to the municipalities and there it can rest. Does the ministry not have any cost estimates or any security guidelines or security plans for representative courthouses?

Mr. Peebles: Perhaps I can answer that in two ways. First, yes, we have a sense of what we are now putting into security; and as I explained to Mr. Sterling earlier, we know how many man-hours of effort, for example, are devoted to this function in various places.

Second, I think at the nub of the question you are proposing is the issue of standards, and standards are enormously difficult to establish.

Mr. Hampton: I accept that; but it seems to me, and I have travelled across the province, you have one very large city, which if I read the press it says that large city now has a crime problem; and you have a number of smaller cities—Ottawa, Hamilton, London, Kitchener-Waterloo, Windsor—which I would think fall into a different category. Then you have cities such as Barrie, Kingston, Sault Ste. Marie, Thunder Bay, Sudbury, North Bay or Timmins; and then you have small-town Ontario. It would seem to me the ministry must have some idea of the differences in court security, the differences in requirements. Does the ministry not have any of that?

Mr. Peebles: If you take a district court in the summertime, you would not really need security at all, because they tend not to sit.



Mr. Hampton: A provincial court.

Mr. Peebles: If you are looking at even a small provincial court location and it is a provincial offences day and there are people coming in to deal with their traffic tickets, the policemen who are there as witnesses are probably adequate to deal with anything that might happen, and the chances of anything happening are enormously small.

If, on the other hand, the next day there is a high profile drug case coming in, even if it is a small location there may be a need, on that day and the days that case takes to be dealt, for a fairly significant police presence, and then perhaps nothing for the period afterwards.

Mr. Hampton: I can accept that analysis for a small town; but at old city hall, for example, where you may have in one part of the court provincial offences cases being tried and just down the hall you may have very serious criminal cases being tried, it seems to me that analysis does not fit. What I am asking is: For these major courtrooms—Metropolitan Toronto, Hamilton, Ottawa, Kitchener-Waterloo, London—do you not have some estimate of what is required for court security, how much it would cost and what the standards need to be?

Mr. Peebles: Old city hall is a fairly good case in point, because in fact Metro police provide the security in old city hall. I would not want to be held to the number, but I think they have 143 to 145, something like that, officers assigned to security duty, and they do basically all the security in old city hall.

As you have heard, we are underwriting the cost of 50 of those officers. That is an arrangement that is unique to Toronto. But essentially the police already are doing it, and to the extent that they are comfortable with what is being done that represents adequate security. If it needs to be beefed up for particular days or if they need to shift officers around, presumably they look after that. There is a staff inspector who is assigned to security in old city hall, who is in charge of all these officers. They can supplement that if they feel it is necessary.

There is one other thing I might just mention. We have invited police forces to sit down with the sheriff in individual locations where there is some prospect of transfer. In many places there is not, but in the places where the sheriff is now doing some aspect of the work, what we have suggested happen is that the local police officials sit down with the sheriff and determine what the sheriff is now doing and use that as the basis to try to get an assessment of what might need to be done in the future. I think to some extent those discussions have already happened.

Mr. Chairman: I would like to thank you gentlemen for coming forward and answering questions and sitting through statements and what have you. We stand recessed until two o'clock this afternoon.

The committee recessed at 12:09 p.m.

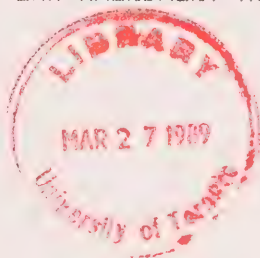
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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

POLICE AND SHERIFFS STATUTE LAW AMENDMENT ACT

MONDAY, MARCH 6, 1989

Afternoon Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Faubert, Frank (Scarborough-Ellesmere L) for Mr. Chiarelli

McLean, Allan K. (Simcoe East PC) for Mr. Runciman

Clerk: Deller, Deborah

Witnesses:

From the Municipal Police Authorities:

Humphrey, Sandi, Executive Director

Allen, Judge H. Ward, President

From the Ontario Association of Chiefs of Police:

Harding, W. I. James, President; Chief, Halton Regional Police

From the Association of Municipalities of Ontario:

Clark, Stephen, President; Mayor of Brockville

From the Ministry of the Attorney General:

Offer, Steven, Parliamentary Assistant to the Attorney General (Mississauga North L)

From the Metropolitan Toronto Police Force:

Scott, Peter, Deputy Chief, Support Operations

Beauchesne, Rusty, Sergeant

From the Municipality of Metropolitan Toronto:

O'Brien, Dick, Councillor, Markland-Centennial, Etobicoke

Gardner, Norman, Councillor, Centre, North York

From the Metropolitan Board of Commissioners of Police:

Makuch, Stan



AFTERNOON SITTING

The committee resumed at 2:06 p.m. in room 228.

Mr. Chairman: I see a quorum. I would like to welcome you all. I hope there is enough seating for everyone. The first groups we have before us this afternoon are the Municipal Police Authorities, W. H. Allen, president, and Sandi Humphrey, executive director; the Ontario Association of Chiefs of Police, James Harding, president; and the Association of Municipalities of Ontario, Stephen Clark, president.

Perhaps you could come forward and take a seat; try to be in front of a microphone so we are able to collect your thoughts on Hansard. Perhaps whoever is going to present the brief can introduce the other people, then we could proceed. You have an hour. After the brief has been presented, I am going to try to allow an equal amount of the remaining time to be divided among the three caucuses for questions. Please proceed.

MUNICIPAL POLICE AUTHORITIES  
ONTARIO ASSOCIATION OF CHIEFS OF POLICE  
ASSOCIATION OF MUNICIPALITIES OF ONTARIO

Ms. Humphrey: My name is Sandi Humphrey. I am the executive director of the Municipal Police Authorities. I would like to introduce you to the representatives here and very briefly give some information on the association each of them represents.

His Honour Judge H. Ward Allen is president of the Municipal Police Authorities and a member of the Barrie Police Commission; he is second to my left.

The Municipal Police Authorities is an organization founded in 1963 with the support of the Honourable F. M. Cass, then Attorney General, and Judge Bruce MacDonald, then chairman of the Ontario Police Commission, to represent municipal police governing authorities and to act as a vehicle for consultation between these authorities and the provincial government.

Police governing authorities are charged with the following responsibilities: maintaining law and order in the municipality; providing adequate policing and hiring members of the force; the governance of the force and the maintenance of discipline; the preparation of the force's budget and overseeing expenditures, and the negotiation of salaries and benefits for members of the force.

On my immediate left is Chief James Harding, president of the Ontario Association of Chiefs of Police, and chief of the Halton Regional Police Force.

The Ontario Association of Chiefs of Police, incorporated in November 1952, is now organized so that the president governs the board of directors and co-ordinates and directs the work of various committees, which includes legislative training, crime prevention, drug abuse and technology, among others. The OACP is concerned with researching and development and subsequent implementation of improved police administrative and operational practices within the police service. The executive of OACP and MPA maintain close liaison with the Ministry of the Solicitor General and the Ontario Police Commission in order to address both the immediate and future needs of policing in Ontario.

On my far left is His Worship Mayor Stephen Clark, president of the Association of Municipalities of Ontario and a member of the Brockville Police Commission. Our comments today are being supported by the membership of the Association of Municipalities of Ontario, which shares with us the many concerns addressed in this brief, particularly those comments pertaining to the financial burden being placed upon municipalities that provide their own policing.

I will not turn further comments over to the president of MPA, Judge Ward Allen.

Judge Allen: Both MPA and OACP—and with your permission I will use those abbreviations to speak for the Municipal Police Authorities and the Ontario Association of Chiefs of Police—wish to go on record with our concern arising from apprehension as to the full intent and scope of the proposed legislation. Our apprehension arises in part out of the content of the proposed legislation and in part out of our belief that some of the bases apparently accepted by the government as being factual may not be correct.

As we understand Bill 187, it is intended to apply to all "premises where court proceedings are conducted." We believe that to include all levels of all courts, including criminal, civil, family, provincial offences and matrimonial causes courts. We believe it to include trials and hearings of appeals in such courts and also pre-trial procedures, such as examinations for discovery, examinations in aid of execution, the taking of evidence before trial, assessments of costs, bail reviews, proceedings under the Extradition Act and other federal legislation, and applications to court or to a judge under the Landlord and Tenant Act and other provincial legislation.

We interpret it to include what is essentially the administrative function of the courts in the offices of the registrars and clerks of the various courts. We further interpret that Bill 187 would require the police force of the municipality in which the court proceeding is conducted to secure the safe custody of any person brought to the court as a prisoner or placed in custody during the proceeding.

In our collective opinion, fulfilment of the responsibilities thus placed upon local police forces will create excessive demands upon the financial and manpower resources of any municipality in which any court proceedings are conducted. Detailed estimates as to the financial impact of Bill 187 will be provided later in this brief. We believe those estimates to have been prepared in good faith, but we query whether anyone can accurately estimate any such impact unless and until the intentions or expectations of the government are more clearly stated.

Only in the context of determining the extent of the financial impact upon some of our members and without our being taken to acknowledge the justification for the imposition of the responsibility upon municipal police forces, we believe such clarification is required in at least the following areas:

The qualifications of the persons who are to be assigned to such duties. For example, must they be fully trained and equipped sworn police officers?

If such persons need not be at least first-class constables, what standards of training, experience and physical condition will be expected? What equipment will be required? Who will require the training and where will such training be conducted?

Who will decide the level of the security service to be provided, first, in the courtroom or hearing room, second, in the public areas of the building and, third, on the grounds on which the building is located? We believe different judges have different expectations or demands for the presence of security personnel in or about the rooms in which they perform their various duties. Who will resolve any difference of opinion in the event an individual judge or court official purports to demand a level of security in excess of that which the chief of police believes is adequate?

As some concern has been expressed as to the adequacy of custodial and security facilities in some court buildings, what consideration has been given to the possibility of civil liability arising out of any such inadequacy and thus transferred to the municipal police force? What are the government's expectations as to the supervision and surveillance of any custodial area?

What are the government's expectations as to when the transfer of responsibility will be effected?

What are the government's intentions with reference to the current contracts whereby the Ontario Provincial Police provide police services to some local municipalities? Similarly, what of the current contracts between or among local municipalities with reference to the provision of police services by one or more to another or others?

On December 5, 1988, the MPA and OACP corresponded with the Premier (Mr. Peterson) to express our dismay at the manner in which this legislation was introduced. No consultation was held with the policing community prior to the introduction of Bill 187 in the Legislature. On January 18, 1989, the Premier responded to our letter, and we make the following comments with reference to his correspondence:

The Premier, in his correspondence, confines his remarks to criminal courts. Our interpretation of Bill 187 leads us to believe the bill will apply to and affect all courts.

The Premier also notes in his correspondence that in many municipalities the police are already providing court security and that Bill 187 will not necessitate any change in their current practices. We respectfully submit that in many areas, service in courts is provided by civilian personnel. Further, there is no sheriff assistance in small municipalities, and in larger municipalities sheriffs discharge a variety of functions including security in superior courts and family courts. In some areas of the province, for example, London, if the sheriff requires additional help, he would hire additional off-duty police officers. This indicates that this cost has been historically accepted as a provincial burden.

The Premier's comments that this legislation only puts into legislation what is already the practice in many municipalities is, with respect, based on erroneous information. This fact will come to light when financial impact figures pertaining to Bill 187 are reviewed later in this brief. Every municipality with court facilities within its jurisdiction will see increased costs should Bill 187 be proclaimed.

Numerous studies have been conducted by the government of Ontario over the past few years relative to the courts and policing in Ontario. We draw your specific attention to the following recommendations:

The Ontario Law Reform Commission, established by the Ontario Law Reform



Commission Act, 1964, for the purpose of promoting the reform of the law and legal institutions, published a report in 1973 under the auspices of the Ministry of the Attorney General. In part II of the report, the matter of the role of police officers in the courts was addressed in some detail.

The commission received a number of representations criticizing the use of police officers as court officers in various capacities in the provincial courts, criminal division. The commission agreed that police "should be freed to perform the duties for which they have been primarily trained. Public confidence in the courts would be increased by reducing the apprehension that the courts are dominated by the police, an apprehension engendered at least in part by the integral role which appears to be played by the police in the functioning of the courts."

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Emil C. Pukacz, a special consultant, was appointed by order in council of Ontario in July 1977. His Report of the Special Consultant on Police and Other Services to the Administration of Justice in Ontario, as published in October 1978, noted:

"In the provinces of Quebec and British Columbia, police forces, under normal circumstances of the operations of the court, do not provide regular security services to the courts. In the province of Quebec, a special security service of the government services is responsible for this task, and in British Columbia, sheriffs' officers of the department of the Attorney General provide this service to all courts."

The Pukacz report recommended that "the Ontario government protective services administered by the Ontario Provincial Police be designated to provide court security officers, information officers and attendants for all courts" and that where police officers were performing these functions, they should be replaced by the protective service or by "specially trained uniformed civilian staff" in the smaller centres. The police were to "supplement and strengthen security in the courts whenever required" if they were present in court and to institute "special security arrangements whenever dangerous prisoners or a large number of prisoners have been brought for trial or where threats, violence, disturbances, etc., are likely to occur."

In the Report of the Ontario Courts Inquiry, 1987, the Honourable Mr. Justice T. G. Zuber notes that municipal police forces are under municipal direction and have their budgets, staffing and training set by municipal authorities. If municipal police forces are employed in the provision of courthouse security, appropriate arrangements must be negotiated with the municipal police forces to ensure the provision of the right kind of service and the availability of that service as required by the courts.

These factors tend to suggest that a provincial force should be responsible for the provision of courthouse security generally. The Zuber inquiry recommended that:

"The provision of court security should be the responsibility of a provincial police force operating at the direction of the courts administration division of the Ministry of the Attorney General. To the extent that use of municipal police forces is considered desirable, appropriate arrangements should be made with the municipal authorities involved and adequate funding should be provided for that purpose."

In the fall of 1987, General W. A. B. Anderson was retained by the

province to undertake a study of problems relating to court security throughout the province. We are concerned that this report has not been made available to us to this time. We suggest the contents of the Anderson report are vital to the discussions being entertained here today and we encourage the Attorney General (Mr. Scott) to make the report available to the standing committee on administration of justice and all groups appearing before it to address the implications of Bill 187.

In a news release on March 7, 1985, the then Minister of Municipal Affairs and Housing Dennis R. Timbrell announced a \$3 increase in the police-per-household grant to "meet the increased financial pressure at the municipal level to provide uniformed police security in the courts and to assist in the transfer and supervision of prisoners." This statement by the then minister recognized that the province was accepting its responsibility to pay for police assistance in securing the courts.

Mr. Timbrell further noted:

"In the past few years, in response to specific problems, court security payments have been made on an ad hoc basis by the Attorney General to a few municipalities. Last year, the Attorney General received requests for funding from many municipalities. Because of the growing number of requests, our ministry will incorporate funds for these purposes into the police-per-household grant as a permanent solution to what has been an increasing problem." That is all a quote from Mr. Timbrell.

We respectfully suggest to members of this committee that the increased funding referred to by Mr. Timbrell in 1985 was to provide financial reimbursement to municipal police forces for limited assistance in the area of court security being provided at that time. The grant was, as Mr. Timbrell noted, an answer to a problem long in existence, as noted by the payments previously made to municipalities by the province. It was not, by any means, an acceptance by municipalities that full responsibility for court security should rest with the municipal forces, as is now suggested by Bill 187.

Mr. Timbrell also indicated in his statement in 1985 that the \$3 increase would assist with increased costs in the area of transportation of prisoners, costs which have dramatically increased since 1984, in view of recent federal initiatives such as the Young Offenders Act. Since 1984, the Municipal Police Authorities and the Ontario Association of Chiefs of Police have repeatedly proposed to government that the \$3-per-household increase has not provided for increased transportation costs to municipal police forces which are picking up much of this added expense. Even without the implementation of Bill 187, the \$3 increase in 1985 has already been expended in transportation costs alone. The speed with which Bill 187 has proceeded has prevented a detailed analysis of transportation costs being prepared and submitted with this brief.

We point out the financial inequities of Bill 187, wherein only those municipalities that have a court facility within their jurisdictions will be impacted by increased costs. This is, of course, in our view, unfair. We point to, as an example, the city of Barrie court, which accommodates eight other municipalities and the Ontario Provincial Police. These other municipalities and the Ontario Provincial Police would not be required to contribute to court security costs under Bill 187. Scenarios similar to the one in Barrie are found throughout the province.

As to the question of provincial financial assistance to municipalities

that maintain their own police forces, we draw your attention to the provincial share of municipal police budgets over the past few years: in 1984, 17.9 per cent; 1985, increased somewhat, to 18.05 per cent; 1986, down to 17.06 per cent; 1987, a further reduction, 16.16 per cent; 1988, 15.44 per cent. Of course, we have no information with reference to 1989.

This gradual but continued drop in provincial financial assistance was further emphasized by the recent announcement that the 1989 police-per-household grant would be frozen at the 1988 level. Although no detailed figures are available at this time, our associations have been advised by our members that this freeze will impose great hardship on municipal police forces and impede their ability to maintain existing services to their communities, let alone work towards initiatives currently being seen as vital to policing in this province.

We have conducted a financial impact study of Bill 187, and we refer you to appendix A to our brief, which not only details the projected impact to municipal police forces but also notes the number of households in each municipality and the \$3-per-household grant calculation for each municipality.

Again, we repeat our earlier point that these estimates have been prepared in good faith, but we query the accuracy of these estimates, pending clarification of the concerns noted earlier. It also bears repeating that these figures relate only to court security and do not include costs for transportation of prisoners, an item that was also to be financially offset by the \$3-per-household grant increase in 1985.

On the bottom of page 6 of appendix A, you will see that the \$3-per-household grant increase amounts to just over \$8.8 million annually to municipal police forces. This is the amount that has repeatedly been brought to our attention as being provided by the province for the costs of court security and transportation of prisoner. Upon further review of the chart, you will note that our projected increases in cost, based upon utilization of special constables, not fully trained constables, will be in the neighbourhood of \$20.3 million, an overall cost to municipal police forces of over \$11.5 million. Again, we point out that these figures do not include costs relating to the transportation of prisoners which were also to be recovered by the \$3-per-household grant increase.

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You will note that many forces—49 out of 119—will not incur any costs as a result of the implementation of Bill 187 as they do not have any court facilities within their jurisdictions. Do note, however, that those forces incur proportionately higher costs in transporting prisoners to court facilities in other police jurisdictions.

In this committee room today are representatives of police governing authorities and chiefs of police from many of the municipalities to be affected by Bill 187. Members of the standing committee on administration of justice may wish to call upon those persons during discussion to clarify any of the costs projected in appendix A.

On the basis of our present understanding of the intent of Bill 187 and its financial impact on many of our members, we fear that the costs now to be borne by those members will lead to a reduction of other police services in those municipalities. Some of those reduced services may very well be in the areas where we have been encouraged by government initiative to increase



police services. We must comment upon our strong relationship with the Ministry of the Solicitor General, with which both the OACP and the MPA have the opportunity to meet and discuss on a regular basis issues and initiatives under consideration by that ministry.

We encourage the Ministry of the Attorney General to look upon our associations as willing contributors to policies and initiatives being considered in the future. We firmly believe that as a consequence of continuing consultation and communication, a more harmonious and productive relationship could exist, the whole of which would ensure that the public is better served.

We encourage the standing committee to decline to approve Bill 187, first, because of its basic unfairness in imposing a traditionally provincial responsibility upon local municipalities without fair compensation and, second, because of the inequity of its financial impact upon municipal police forces.

We offer our assistance and our input into any discussions that may be undertaken in the future to deal with the matter of court security, transportation of prisoners and other matters that we feel must be addressed once and for all to the satisfaction of the provincial government, municipal police forces and municipal police authorities.

I now ask Chief Harding to continue with this presentation.

Mr. Chairman: Thank you for your brief. It was excellent.

Judge Allen: Thank you, sir.

Mr. Harding: Mr. Chairman and committee members, before I start my presentation—

Mr. Chairman: I am sorry, you cannot be picked up by Hansard if you are standing. That is a problem.

Mr. Harding: I will sit down then. Before I start my presentation here this afternoon, I would like to show you something that was delivered to me this morning as I was packing my briefcase to come here. I received this from Sir Peter Imbert. He is the Commissioner of Police for London, England, the Metropolitan Police. It is a medal of Sir Robert Peel, to commemorate his bicentennial year. I wondered, as I was gifted with this particular memento, what he would now think of how government treats his police forces, and I will share some opinions about that with you.

I am pleased to continue this presentation on behalf of the Municipal Police Authorities and the Ontario Association of Chiefs of Police.

Members of the Ontario Association of Chiefs of Police, in taking their oath of office, are in fact pledged to support the government of the day. We have and will continue to demonstrate that support. However, the concern for the wellbeing of our profession and the degree to which our professional capability would be impaired by the potential impact of Bill 187 prompts us to join with the Municipal Police Authorities and the Association of Municipalities of Ontario in raising our collective voice against the proposed legislation.

The speed and manner in which Bill 187 was presented and eventually

brought to the attention of the Ontario Association of Chiefs of Police, generated great concern among all members. The degree of consultation, mediation and opportunity for input on matters affecting policing afforded the Ontario Association of Chiefs of Police by the Ministry of the Solicitor General has served to predispose us to the belief that such would be the conduct of all ministries of the government which so strongly touts the concept of democracy. You might well understand, therefore, our disappointment for the process adopted by the Ministry of the Attorney General in trying to divest itself of a duty which has always been legally and historically its responsibility.

I am confident legal opinion to prove that particular point is readily available. However, should you require some clarification of that opinion, you might well find it in the introductory language of a written contract entered into between the Ministry of the Attorney General for the province of Ontario and the Board of Commissioners of Police of Metropolitan Toronto:

"Whereas the parties recognize that the provisions and maintenance of security in the provincial courts is an aspect of the administration of justice in the province of Ontario and as such is the responsibility of the Attorney General."

The Honourable Judge Ward Allen has referred to the costs set out in appendix A of our joint report and you will note that police forces are listed in alphabetical order. For the purpose of this part of our presentation, I will refer to those same police forces and costs set out by the zones in which they are designated. Representatives of those zones are here today and will be prepared to speak further to their concerns, if required.

It would seem appropriate at this time to make comment upon the fact that two sets of cost figures are offered for your information. When Bill 187 was first presented, we were collectively seized with the belief that in order to satisfy its concern for the safety and wellbeing of sitting judges and court staff, Bill 187 envisaged the use of fully qualified police officers who would, of course, be competent in the carriage and use of firearms.

It would appear that the Ministry of the Attorney General has experienced a change of heart regarding the degree of concern for the level of security required and, indeed, who should provide it. We are now advised that such security can in actual fact be provided by special constables. Special constables within municipal police forces in the province of Ontario are not armed. This draws us to the conclusion that the concern for safety implied by this proposed legislation is a questionable one and it is that which raises in the mind of the Ontario Association of Chiefs of Police the suspicion that the need to divest itself of financial responsibility is, in fact, the greater issue and the one which moves this proposed legislation before you.

We are confident the figures I will now present to you will justify the concern held for the impact of Bill 187 upon policing in Ontario.

Zone 1 includes the municipal police forces of Atikokan, Dryden, Fort Frances, Marathon, Red Rock, Terrace Bay and Thunder Bay. For uniform officers, the cost is \$682,938. The total cost for special constables would be \$498,400.

Zone 1A includes the municipal police forces of Elliot Lake, Espanola, Kapuskasing, Kirkland Lake, Michipicoten, New Liskeard, North Bay, Sault Ste. Marie, Sturgeon Falls, Sudbury region and Timmins. For uniform police officers, \$2,085,402; for special constables, \$1,485,147.

Zone 2 includes Alexandria, Belleville, Brockville, Cardinal, Carleton Place, Cobourg, Cornwall, Deep River, Deseronto, Gananoque, Gloucester, Hawkesbury, Kemptville, Kingston, Nepean, Ottawa, Pembroke, Perth, Prescott, Renfrew, Smiths Falls, Stirling, Trenton and Tweed. Total cost for uniform officers, \$2,778,737; for special constables, \$2,027,261.

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Zone 3 includes the municipal police forces of Alliston, Barrie, Bradford, Collingwood, Durham region, Innisfil township, Lakefield, Lindsay, Metropolitan Toronto, Midland, Orillia, Peel region, Penetanguishene, Peterborough, Port Hope and York region. Total cost for uniform officers, \$16,322,790; cost for special constables, \$10,292,051.

Zone 4, which includes the municipal police forces of Brantford, Haldimand-Norfolk, Halton region, Hamilton-Wentworth region, Niagara region, Norwich, Paris, Ingersoll, Tillsonburg and Woodstock. Total cost for uniform officers, \$3,643,552. Total cost for special constables, \$2,481,968.

Zone 5 includes the municipal police forces of Durham, Fergus, Guelph, Hanover, Harriston, Kincardine, Listowel, Meaford, Milverton, Mitchell, Mount Forest, Orangeville, Owen Sound, Palmerston, Port Elgin, Shelburne, Southampton, St. Marys, Stratford, Thornbury, Walkerton, Wingham and Waterloo region. Total cost for uniform officers, \$1,717,449; cost for special constables in those areas, \$1,269,166.

Zone 6 includes the municipal police forces of Amherstburg, Anderdon, Aylmer, Chatham, Clearwater, Clinton, Colchester South, Dresden, Essex, Exeter, Goderich, Leamington, Kingsville, London, Mersea, Petrolia, Point Edward, Sarnia, Seaforth, St. Clair Beach, St. Thomas, Sandwich West, Strathroy, Tilbury, Wallaceburg and Windsor. Total cost of uniformed officers, \$2,854,748; for special constables, \$2,262,800.

These factors become even more significant and alarming when you add to them the cost incurred for the transportation of young offenders as required by the Young Offenders Act.

While our review of the total cost of this duty is not yet complete, you might well gain some measure of understanding of their impact when we state that the 1988 cost for Metropolitan Toronto was \$410,265. The impact upon smaller municipal police forces is as proportionately significant and is compounded by the fact that the duty of providing transportation for young offenders often leaves the area very inadequately policed. The proposed Bill 187 and the existing Young Offenders Act are two glaring examples of how poorly conceived legislation can adversely affect the ability of the police to deliver its service to the community.

The ever-diminishing amount of money allocated by the provincial government to municipalities has already had a negative impact upon the quality of policing. Bill 187 would compound an already worsening situation and will make even more difficult the task of boards of commissioners of police and municipal governments in preparing and meeting annual estimates for the costs of policing.

Already as a consequence of the effects of financial restraint, the quantity and quality of training available to municipal police officers in Ontario have been significantly reduced. Bill 187 will do nothing but worsen a situation we are now already viewing with grave concern.



The question of police training and the degree of our state of preparedness to deliver a professional service to an ever-changing and increasingly demanding society is now in the sharp focus of public concern.

You will all be aware of the fact that the recently appointed Race Relations and Policing Task Force has received submissions from concerned groups and individuals across the province of Ontario. While it is true to say that during the task force hearings there were widely stated expressions of support for the police in most of their aspects, certain factors of performance have generated a significant degree of concern and adverse comment. They must not be left unaddressed.

Our particular concern for the purpose of this presentation is the competency of the police in functions touched and affected by the quantity and quality of training, especially in areas of race relations, cultural awareness, crisis intervention, the use of restraint holds, the use of the police baton, the carriage and use of firearms and the law relating to the use of force.

It is a sad commentary, not upon the police who are now being heavily criticized for questioned standards of proficiency in those areas, but upon those who control the purse-strings of money available for police training. It is regrettable that we must today testify here to the fact that standards of police training were better in previous years than they are now. The ability of the police and of the Ontario Police College have been significantly impaired by restricted funding. The consequence is that a lower standard of police proficiency now exists.

You do not have to be a Philadelphia lawyer to understand the fact that if you do not properly train to the desired standard of proficiency, then proficiency will not be achieved. That there is now a question in the minds of the public regarding the level of police proficiency is without doubt. To that end, I must point out for the benefit of my profession as clearly as I can, in the hope that the public, to whom we are accountable, will clearly hear, that I have yet to witness anyone from government come forward to share in the accountability for the position in which the profession of policing now finds itself.

The impact of Bill 187 will do nothing but compound the difficulties now being experienced by those charged with the responsibility to deliver policing services to communities and those who are supposed to benefit from it.

I wish to speak now to another potential detrimental impact that Bill 187 will bring to the police and other components of the judicial system. The bill presents an opportunity for conflict to develop between those who are in charge of the courts, those who administer the courts and those in command of available police resources. When the question regarding the standard, quality or quantity of court system security arises, who will decide what the level of response will be? It appears on the face of it that someone else might decide how, why, where and to what degree police resources are used without ever having to be held accountable for the impact such a decision will undoubtedly have on other levels of police service.

There are already indications in some areas within this province that such conflict is already apparent. This aspect of Bill 187 makes it outrageously short-sighted and points to the fact that its architects are blind to its shortcomings.

Studies on one part of the judicial system or another have been

conducted in the past and the Ontario Association of Chiefs of Police takes this opportunity, once again, to recommend that a complete review of the judicial system be undertaken in an attempt to better orchestrate the various subsystems that make up the total judicial system, so that we might determine some common goals and purposes against which to more successfully design our collective efforts to achieve them.

Bill 187 is the means of taking away the crutch of a system that is already badly limping. Bill 187 would do nothing but severely aggravate the concerns already felt by both the police and the public regarding the presence and role of the police in the court system. In all previous presentations regarding this particular issue, the Ontario Association of Chiefs of Police has always and will always express its concern for the role its members are compelled to play.

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Our most recent presentation was made to Mr. Justice Zuber, appointed by the Ministry of the Attorney General to study the court system in Ontario. I think it appropriate to repeat that position to you today, especially since it was not made very evident in the final report of Mr. Justice Zuber.

I will now quote from the brief submitted, under the heading "Court Administration":

"The aspect of court administration has been in the critical eye of concern for a considerable period of time and the membership of the Ontario Association of Chiefs of Police continually finds itself frustrated in its efforts to secure improvements. You will no doubt be aware, Your Honour, that there have been some instances, albeit rare and infrequent, when local chiefs of police have refused to supply the conventional and traditional, yet unlegislated presence of sworn police officers to assist in the administration of the courts.

"As a consequence and in response to the strength of our membership's feelings on this matter, this part of the report will address itself to police officers functioning as court staff, police officers functioning as court prosecutors," etc.

Under the heading "Police Officers Functioning as Court Staff":

"The practice of police officers serving as court attendants is unanimously considered in police circles as being an unreasonable imposition upon the intended use of police resources.

"If the judicial adage that 'justice must not only be done, it must be seen to be done' holds any merit, how can this philosophy be reconciled with the instances where accused persons who protest their innocence to the police are assured that they will be the recipient of a fair and unbiased adjudication in court, only to find on their subsequent appearance that police officers appear to be an integral part of the court function? Regardless of their role and lack of influence in the judgements of the court, can we honestly suppose in the eyes of the accused, or the public generally, that justice is seen to be done?

"It is very difficult under such conditions to expect accused persons to believe that the proceedings will be conducted without bias and that the court is not prejudicial to the benefits of the police.

"Regardless of how unwarranted such conclusions may be, this practice has no doubt contributed to a significant degree towards the considerable decline in the public confidence in the courts and the police.

"In recent years, legislation such as the Administration of Justice Act appeared to give the hope that there was to be a more clearly defined demarcation of responsibilities of duties and costs between the function of the courts and the function of the police. How then can this principle be consistent with the necessity for individual municipalities to supply personnel at a cost to the municipality for what is now considered by legal process to be a function and responsibility of the province of Ontario?

#### "Police Officers Functioning as Court Prosecutors:

"While this activity is usually restricted to offences constituting a breach of provincial statutes or a municipal bylaw, and notwithstanding the fact that section 57, part VI, of the Police Act of Ontario includes the prosecuting and aiding in the prosecuting of offenders when it defines a police officer's duty, it is just as unacceptable as if it were the prosecution of criminal offences for like reasons, only more emphatically so than those previously stated. In addition, it is highly unrealistic to expect a police officer acting as a prosecutor to demonstrate the same degree of impartiality in a case where the credibility of a fellow police officer is contested, as would be expected from a member of the crown attorney's staff. Perhaps more to the point, at the risk of being repetitive, it is even more unrealistic to expect such procedures to be conducive to establishing public confidence in the courts or the police. It is difficult to understand why a procedure that is not practised in the higher courts should be considered acceptable in courts at a lower level."

The Honourable Judge Ward Allen has already pointed out that we do not stand alone in this opinion and has cited the various studies and reports which advocate diminishing the role of the police in the court system. We are left to wonder whether some day, some time, somewhere, government will appoint a task force or a committee to do a study to which it might listen. It has not listened thus far, and we would recommend you do so now.

The Ontario Association of Chiefs of Police will gladly join with the police-governing authorities in lending our assistance in any project that might be developed to design a more relevant and meaningful judicial system for the province of Ontario.

In conclusion, should Bill 187 be passed into law, and in the event municipal governments are unable or unwilling to provide the additional funds for discharging the duty properly belonging to the Ministry of the Attorney General, you might wish to advise us, for our benefit and for the consideration of your constituents and electorate, what service you recommend be cut in order that we might fulfil this additional duty.

That concludes my presentation. Thank you.

Mr. Chairman: I do not think anyone is going to answer that last question.

We have had an opportunity to hear from everyone except Stephen Clark. We do not have a written submission from you, but if you have a few words to say, we would be happy to hear them, or we will start into questions.

Mayor Clark: I will be very brief. Certainly our association, the



Association of Municipalities of Ontario, is pleased to join with the Municipal Police Authorities and the Ontario Association of Chiefs of Police in being here to bring comments on Bill 187. I am going to be very brief because certainly the two previous speakers, representing their groups, have really outlined a lot of the details our association supports, primarily in the aspect regarding finances.

To look at the property tax base in this province, it is beginning to appear to municipalities that the property tax base is becoming one that funds provincial taxes and provincial responsibilities. Certainly, Bill 187 is a classic example, as the previous speakers mentioned, of provincial responsibility at local cost.

Our municipal association is concerned about the cost of implementation of Bill 187. The issue of unconditional grants, which affects the police, is of concern on two points, not just the aspect of cost, but certainly of consultation. Judge Allen mentioned that there was a surprise, in the police area and also municipally, at the decision for this particular document to be proposed, and also there is the aspect of the unconditional grant allocation being flat-lined. Certainly, we are concerned with that aspect.

Our support to the chiefs and the MPA is one of grave concern financially. We share their view. We will offer our assistance and input on any future direction. I think that as three groups, representing many municipal individuals in this province, we are giving this committee and the government an opportunity. The opportunity is one of fairness.

Our group shares the views of the other two in saying that this committee and the government have a chance to decline to pass this piece of legislation, to recognize there is an unfairness in municipalities funding provincial responsibilities, and to set the record straight and correct the record in terms of Bill 187 and court security in the province of Ontario.

In our association, we are pleased to join in this brief, pleased to answer questions the committee may have and certainly pleased to offer our input and assistance, if necessary, to put forward what is right in this province and what is fair.

Mr. Chairman: I am now going to open up the floor to questions from the three parties. We have 15 minutes left, so I am going to allocate five minutes to each caucus.

1500

Mr. Sterling: First of all, maybe I could suggest that on the government side, if they want to take the time and use it fruitfully, they might answer the questions on page 2 of the brief by Judge Allen. With respect to all those questions, I would like to have a direct answer to those specific questions.

This morning, we had a briefing by the Attorney General with regard to this piece of legislation. Fortunately, I was able to obtain a copy of the Anderson report. From my reading of the Anderson report, the reason the public does not have a copy of the Anderson report is that it would be very embarrassing to the Liberal government if this report were divulged.

I say that from the point of view of the recommendations, both with regard to what should be done and the implementation of changing the court

security system. Basically, what the government has done is to take the first four recommendations of the Anderson report and to disregard all the other recommendations. The other recommendations relate to the financial responsibility and the leadership role the Solicitor General (Mrs. Smith) and the Attorney General should play with regard to implementing a change in the security surrounding our courthouses across the province.

We asked many questions this morning that were basically the same as yours on page 2, Judge Allen. The answer I received this morning about guidance as to the level of security that should be supplied across the province was that neither the Solicitor General nor the Attorney General were going to take any leadership role in providing any guidance to any municipal police force across this province.

In effect, what I was told this morning—I ask the parliamentary assistant to the Attorney General, the member for Mississauga North (Mr. Offer), to correct me if I am wrong—was that you have Bill 187. Each municipal police force across this province will be asked to interpret it as it sees fit. The level of court security may be very different in Brockville, in Mr. Clark's municipality, as opposed to Sarnia or Ottawa or any other one. That will have to be decided on a local basis, and therefore there is really no measure by which you can determine what the costs are going to be.

I can only determine that this is for the purpose of the lack of the leadership that was recommended by General Anderson. He recommends that guidelines be provided and that financial assistance be provided. They do not want to do that. They do not want to provide the financial assistance. They recognize the fallacy behind providing you with guidelines, because if they provide you with guidelines, then the next question you ask is, "How will we meet those guidelines and where is the money to fulfil them?"

I think if this government did see fit to make the Anderson report public, then a lot of your questions would be answered in terms of the lack of answers, the lack of consultation that has taken place.

I would like to read the five recommendations. I am reading from page 25 of General Anderson's report.

"These recommendations, if adopted, should clarify where responsibility lies in the several measures necessary to improve court security and provide for prisoner transportation. They recognize that the status quo is unsatisfactory and that the courts being vital features of the provincial administration of justice, the province has a responsibility to share the cost of upgrading the service. To this end, the following sequence of events should be followed:

"(a) The AG, in consultation with the SG, provide guidelines governing the minimum levels required for court security;

"(b) The SG, on behalf of the AG, establish with the police forces what it costs them now to provide court security and prisoner transportation, and obtain from them their plans for meeting the AG's standards;

"(c) Local police plans be examined by the AG in consultation with the SG to ensure that any additional cost to the province is kept to a minimum and the conclusions reached be discussed with the local police;

"(d) A decision be made on whether to continue with per-household grants; and

"(e) Finally, the AG prepare a cabinet submission comprising a comprehensive security plan covering the assignment of responsibilities, the amendments to the legislation, the upgrading of physical facilities and the cost to the province of supporting the police in their duties to provide adequate court security and safe and secure transportation of prisoners."

That to me sounds like a reasonable and logical method of implementing the change to your security system as implemented in Bill 187. Therefore, I do not know whether we can stop this particular piece of legislation. I had an opportunity to talk to the deputy chief of the Sarnia police force at lunchtime, and he indicated to me the number of occasions when this \$3-per-household grant has been thrown back in his face by the sheriff of that fine municipality, as to what it cost or what it was for.

According to the sheriff in Sarnia, it was for the transportation of young offenders, it was for handling—

Mr. Polsinelli: On a point of order, Mr. Chairman: Mr. Sterling has taken his full five minutes to ask the question. Perhaps the committee would allow the witnesses at least a few minutes to respond.

Mr. Chairman: I think they are probably getting the gist of it, that questions are not necessarily questions, but it is Mr. Sterling's time. He can use it as he wishes and he has not yet used his five minutes, so that is not a point of order.

Mr. Sterling: The final thing with regard to this is, do you not agree, even if Bill 187 is carried forward, that a longer period of consultation is required to carry out the recommendations and the concerns that were raised by General Anderson in his secret report to the Attorney General?

Mr. Chairman: A brief reply. He was close to the five minutes but not totally.

Judge Allen: It is going to have to be very brief, because we know nothing about the Anderson report. I have heard about some of the contents of it now for the first time.

I think the answer generally is yes. Certainly, if Bill 187 in any form is going to be enacted into legislation, there has to be time, and as we put to this committee, there should be consultation to see how it works. We are concerned as to what standards are to be there and who is to determine what those standards are. That sort of concern I think is expressed in the questions we asked in our brief.

Mr. Hampton: I wanted to say thank you to all four of you for your briefs. I will be quite blunt. We heard earlier from the ministry this morning, and all of the nuts and bolts that are involved in this issue were absent from the ministry's presentation. You have at least taken the time to give us some ballpark figures on what it will cost. You have asked the difficult questions.

When we asked the ministry people this morning about standards in security, they said, "Well, we do not know." We asked them if they had any idea as to who would provide the training or what kind of training would be provided and they said, "We have not worked that out." So I thank you for bringing this issue into the proper kind of focus.



I have a view of what is going on here, having read Chief Justice Howland's reports on the opening of the courts in 1988-89. In both reports, he says there is a serious problem in terms of court security and it is more serious in some places than in others. Would you agree that in some cases we have a serious problem with court security?

Mr. Harding: Yes, I think it is plain for anyone to see that in some of the municipalities within Ontario there is a greater degree than would be experienced in others.

Mr. Hampton: I do not see Bill 187 addressing in any way the nuts and bolts of that court security issue. Would you agree with me on that? I just do not see it addressing the nuts and bolts questions: What quality of security? What level of security? What level of training? Who pays for the training?

Judge Allen: You are asking exactly the questions that we put forward. We recognize that there are distinctions across the province or there may very well be distinctions within the various levels of courts within one city. Some of those real concerns may arise where you least expect or where you might least expect. You may be expecting the difficulties in the criminal courts. I would suggest that is not always so, because the police officers responsible for bringing people before the courts are aware of the attitudes of those people and their associates. But if you take matrimonial causes, you take landlord and tenant, those are areas where human emotions come to the fore, and not in a criminal court setting.

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Mr. Hampton: Further, I think what is happening here in Bill 187 is what I call a municipal option of court security. The responsibility is being shoved off on municipalities, but none of the information about cost and all of the questions of where you put your priorities—If you have a global police budget, how do you divide it up? What portion goes to court security? What portion goes to community policing?—is being provided by the provincial government, in my view. I cannot find it.

Judge Allen: I guess we cannot either, but that is inherent in what we have been asking. What is the standard and who is to set that standard? I would not like to be a chief of police and have the Chief Justice of Ontario asking for a particular level of security in his courtroom and answer, "No, I don't think that's required in this particular setting, Mr. Chief Justice." That is a terrible situation.

Mr. Hampton: The situation that I fear is being set up here is that if Bill 187 passes, it then becomes a matter for the courts, the chief justices and the municipalities. Where problems arise, the provincial government will then be able to hold up its hands and say: "It's not our responsibility. It's not our job." Do you have any comments on that? If you do not agree with me, say so, but I have a very great fear that is what is being set up here.

Mr. Harding: With all due respect, it is their job, and that is the point I was trying to make this morning when I showed this Sir Robert Peel medallion here. It is the job of government to look after the welfare of its people and the duty of government can be well discharged by looking after the level of competence of its police forces.

If the government abdicates its responsibility to show a care for and to

be in charge of and to be concerned about standards or levels of proficiency, then it does not deserve the faith and confidence of the people. There is a duty upon government to look after the level of competence of police forces.

As far as I am concerned, I am here to insist that government does its duty and not abdicate the wellbeing of professional policing in Ontario, which is what Bill 187 will help you to do.

Mr. Chairman: Mr. Mahoney, five minutes. I notice behind you Mr. Polsinelli, so you may wish to share some or none of your time with him.

Mr. Mahoney: A couple of things. First, to the chief, your brief outlines a number of costs that you or someone on your staff has gone to a lot of trouble to compile. I wonder if we could be presented with a detailed analysis. What I mean by that is: In Atikokan, what are they doing now? What are the costs now? How are they handling the court security? As you have compiled this and come to these bottom-line figures, I assume you have the balance of the data available that you have not presented here.

Mr. Harding: Yes, we do. That is very well illustrated in appendix A of the brief submitted by His Honour Judge Allen.

Mr. Mahoney: That is where I was looking for that. I am more interested in a little more detail in the sense of how the security system operates. We can get it, but I assume you compiled it and I would like to be consistent in using your data to arrive at your figures. Whatever you have in that regard would be of some help. Could I ask, because I would like to leave some time for Mr. Polsinelli -

Mr. Chairman: I gather the chief said that the information he has presented is exactly the same information that was presented by the earlier presenter, only in zones as opposed to individual-----

Judge Allen: Exactly. For the purposes of both the OACP and the MPA, the province is divided into zones.

Mr. Mahoney: So you are saying that the figures here can be taken from these charts.

Mr. Harding: That is right.

Judge Allen: We do not have the breakdown as to how each municipality has arrived at its figures. Each chief, I presume, has been put in the predicament of trying to interpret what he is going to require.

Mr. Mahoney: They submitted these figures to you, and they have been extrapolated then into your report.

Mr. Harding: We put them in by zone because we thought there might be MPPs here who might identify by zone. We have officers here to identify by zone to answer your questions if you have them.

Mr. Mahoney: I too appreciate the quality and the detail of the briefs and the comments by everyone on this. I think it is important that some of the statements come out.

Do you see any use, though, or any future possibility of more civilian use for different uses within policing or perhaps special constable uses

through the auxiliary police, whether it be in court security or something else. Recognizing the fact that not only is the nature of the job changing from your perspective but the nature of the demands on government are changing, as I am sure you understand, do you see any way of perhaps making changes co-operatively that make some sense economically to a government that is being pulled at every corner?

Mr. Harding: For quite a number of years now, police forces in Ontario have adopted the process of civilianization within their police forces, yes, to provide a more appropriate service in some circumstances and to reduce costs.

The general guideline we use is this. Does the function required to be discharged require the full authority of a police officer under the law? If the answer to that is no, then in general, we are prepared to civilianize that particular position. You can see that police forces across Ontario have gone very heavily into a program of civilianization. For example, on my own force, almost one third of our people are civilian members of the force. That is a way of cutting down costs and assigning people to those jobs that they can appropriately discharge.

Relative to the issue of court security, if the concern is one of security and if there is a potential conflict situation which might require a police officer to use a police hold, to use his monadnok or his nightstick or to use a firearm, then he must be fully competent and trained to do that. The task force on policing that we are burdening through at this particular time makes it very, very clear to us that the public has a very grave concern about the competence of the police relative to the use of firearms and the use of force. To take this step and to put this very important aspect of our duty into the hands of an untrained civilian I think is begging for trouble.

Mr. Polsinelli: Mr. Harding, you are a police chief, I take it, president of the Ontario Association of Chiefs of Police. What area of Ontario do you represent?

Mr. Harding: All of Ontario.

Mr. Polsinelli: No, as a police chief.

Mr. Harding: As a police chief, I represent the regional municipality of Halton. We police the city of Burlington, the town of Oakville, the town of Halton Hills, which is Georgetown and Acton, the town of Milton and 16 villages in between for a total area of 381 square miles.

Mr. Polsinelli: That is quite a large area. How many courthouses do you have in your area?

Mr. Harding: We have three courthouses.

Mr. Polsinelli: How are those presently protected?

Mr. Harding: They are protected by a combination of police officers, sheriffs and court staff.

Mr. Polsinelli: Who has the responsibility for the overall security of those court systems? Is it yourself or the Attorney General's office?

Mr. Harding: The law is quite clear on that fact. It is the Attorney General. For the services we provide, we bill him for that.



Mr. Chairman: Thank you, Mr. Polsinelli. As a matter of fairness, just to let everybody know what I do up here, I just get to call the time on these guys and try to keep them in order. I want to thank you very much for two briefs that were very well prepared and very informative. I thank you on behalf of the committee for bringing that information to our attention.

Mr. Sterling: Before this group leaves, could I ask the parliamentary assistant to the Attorney General to provide us, before we go to clause-by-clause, with written answers to the questions on page 2 of Judge Allen's brief? I would appreciate getting those.

Mr. Offer: Just to put it on record, there will be no problem. We will provide those.

Mr. Chairman: I understand the parliamentary assistant has indicated there will be no problem in terms of providing that information.

Mr. Polsinelli: I would like to make one further comment if I could before the group leaves. Perhaps what we should do is this. I understand that the committee procedure is such that when we have witnesses here, the time that is left after their presentation should be used for questioning the witnesses and not for making statements. I would appreciate it if that were the procedure that were followed in future.

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Mr. Chairman: Mr. Polsinelli, if you read the rules of order, they provide a very wide latitude. In fact, they provide for statements, questions, leading questions, with which some of you gentlemen will probably be familiar, or whatever.

Mr. Hampton: I too have a question to ask of the ministry personnel who are here. I fail to see the rationale for not providing the groups that are appearing before us with a copy of the Anderson report now, since Mr. Sterling has one and I have one. Even though we are not supposed to have one, we have it, so why not give the groups who need to know about this the information they need to know?

Mr. Chairman: You have asked the question of Mr. Offer, and he can answer it.

Mr. Hampton: I would give them my copy, but there are parts of it that are difficult to read, so maybe Mr. Offer could give us copies. If it is not a public document, it is clearly in the wrong hands now anyway, so why not make it available to the people who should have it?

Mr. Chairman: Where is the plain brown wrapper, Mr. Hampton?

Judge Allen: Mr. Chairman, before we leave, we want to make one comment, and that is to say that the groups represented here today stand ready and willing to co-operate with or discuss any of these matters with this committee or with anyone else in government who may be interested in relation to these matters.

Mr. Chairman: I appreciate that, Your Honour. Thank you very much.

We will have a five-minute recess before we invite the next group before us. We stand in recess until 3:25.

The committee recessed at 3:22 p.m.

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Mr. Chairman: I lied. It is 3:30 p.m.

Interjection: You must be from Brampton.

Mr. Chairman: That is right. The cigarette took longer than I thought it would.

We now have before us the Metropolitan Toronto Police, Peter Scott, deputy chief, and Rusty Beauchesne, sergeant. Then we have, with the Metropolitan Board of Commissioners of Police, a change in the agenda. It is Norm Gardner and Stan Makuch. For the Municipality of Metropolitan Toronto, we have Dick O'Brien, councillor.

Just before you start, there was a question asked of the parliamentary assistant to the Attorney General. He has an answer, and for purposes of Hansard, will give that answer.

Mr. Offer: For the benefit of the chairman and all members of the committee, the question posed was by Mr. Hampton with respect to the Anderson report. I would like to indicate that is the report that was made to government, some matters of which formed advice to cabinet. As such, it was and is deemed to be confidential.

Mr. Chairman: All right. Perhaps the main presenter of the brief might introduce the other people for purposes of the record of Hansard and then proceed to read the brief, if he cares to do that. It is your time. Then we will allocate, as I said, the time left over for questions, statements, whatever, from the members of the various parties.

METROPOLITAN TORONTO POLICE  
METROPOLITAN BOARD OF COMMISSIONERS OF POLICE  
MUNICIPALITY OF METROPOLITAN TORONTO

Mr. P. Scott: Thank you, Mr. Chairman. My name is Deputy Chief Peter Scott of the Metropolitan Toronto Police. I point out that this is a joint presentation with the Metropolitan Board of Commissioners of Police and the Metropolitan Toronto Police.

Representing the chair of the board of commissioners of police is Stanley Makuch, who is assisted by Councillor Norm Gardner, a commission member. Councillor Dick O'Brien, Metro budget co-ordinator, is here to answer your financial questions or any impact that you wish to have answered in the financial arena.

Sergeant Rusty Beauchesne is a lawyer on my staff and has assisted in doing the research and the presentation of this brief and will make a small presentation in regard to the numerous reports on this matter during my presentation.

In the audience, I have Staff Inspector Victor Lovegrove, who is the officer in charge of the Metropolitan Toronto Police Court Bureau. There are 11 court locations within Metropolitan Toronto, with 234 personnel staffing the courts under his command. We believe we have adequate resources here to answer your concerns.

I am pleased to have this opportunity to appear before you and give you our view of Bill 187. My presentation will restrict itself to the policing arguments against undertaking the responsibility of court security. We will touch upon the financial repercussions, as those appear to us the only logical motivation for the introduction of Bill 187. For the interest of your members, we have a detailed analysis of our costs, what personnel we require and replacement costs in appendix 3. We shall be getting to that a little later.

I have listened to the other presentations and, in consideration of your time, I have abbreviated mine to some degree. The presentation I have for you today centres on three main issues.

First, we believe this bill to be a breach of trust, a breach of understanding, a breach of commitment—symbolic in nature but there—between the Attorney General, the Metropolitan Toronto Police Force and indeed, in turn, the citizens of this province. We will be bringing forth evidence to support this view.

Second, we believe the bill is contrary to the democratic values of our society, which, in essence, are to keep law enforcement separate from the administration of justice and ensure the impartiality of our justice system.

To show how strong this value is within our community, we will bring forth evidence that no other Canadian province provides security for the courts through the police personnel. All have gone through a similar process of what we are doing today, and all except Ontario have decided that the close association between the courts and administration of justice and pursuit and apprehension impairs the impartiality of justice.

The third major concern is a serious concern. There is no doubt that this bill will divert resources and energies from our community-based policing function—our efforts to build bridges with various segments of the community, our victim assistance programs, crime prevention, drug education and other community-based initiatives we have undertaken. We believe this bill will lower the level of security within the courts and also lower the level of security on our streets.

The Metropolitan Toronto Police Force has always taken the position that it is the responsibility of the Attorney General of this province to provide and maintain security in the courts, not only within this community but throughout the whole province. Unfortunately, due to good faith and our spirit of co-operation with the Ministry of the Attorney General in recent years, our presence in the courts, which originated as a temporary accommodation, has come back to haunt us in the form of a commitment from which we are unable to extricate ourselves.

You can therefore understand our feeling of utter shock and dismay when Bill 187, An Act to amend certain Acts as they relate to Police and Sheriffs, was introduced in the Legislature on November 17, 1988. We find it inconceivable that the Attorney General has developed such a significant piece of legislation which so drastically affects the police service and its resource capacity without first offering us the opportunity for input and consultation.

We come before you to present to you what we feel are well-researched and sound principles to convince you that this proposed piece of legislation not only contradicts all empirical and legal studies which have been conducted on the issue of court security but also is doomed to be challenged as a bad law.



We also wish to convince you that the bill as it is presently drafted imposes undue restraints on the capacity of my police force, and indeed all police forces in this province, to meet their mandate; that is, to serve and protect the members of the community. It will lower the level of security in the courts and the level of security on our streets. We are hopeful that you will send this bill back to the House in a form which addresses and resolves the concerns which we feel presently exist.

In the interest of brevity, I refer you to the executive summary. Page 1 details the bill and our desired outcome, which I have stated. Moving into page 2, there is a small history. This history is important because it really details our relationship with the Attorney General.

Prior to 1981, the forces staffed the provincial courts within Metropolitan Toronto with police officers and were responsible for the entire cost. During 1980-81, the senior management of the force—and I was one of them—decided to replace the constable content of the court staff with 109 lesser-paid civilian court security officers.

At the same time, the province was approached—in particular, the Ministry of the Attorney General—for funding of the court security function. The force at that time had been arguing and continued to argue that this was a function which fell under the ambit of the Attorney General's responsibility for the administration of justice in the province of Ontario.

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These discussions led to an agreement with the board, and it has been mentioned several times today. In July 1981, this agreement was signed.

The opening salutation, the opening paragraph, is significant, "Whereas the parties recognize that the provision and maintenance of security in the provincial courts is an aspect of the administration of justice in the province of Ontario and as such is the responsibility of the Attorney General."

The agreement further goes on to indemnify the board for the salary of 50 civilian security officers. That is in section 11.

The agreement could be terminated by either party under one year's notice. The whole agreement, which will be referred to later, is in appendix 1.

On March 7, as you are well aware, the \$3-per-household grant was advanced. The rationale was to replace special arrangements regarding court security payments to the various municipalities of the province. In the same month, the province stopped making monthly payments to the metropolitan corporations without any notice or consultation.

Two years later, in February 1987, as we had received no notice of termination or payment despite repeated overtures to the Attorney General to comply with this agreement, the Metropolitan Board of Commissioners of Police commenced an action against the province claiming payment of arrears. Seven months later, the province served us with a notice to terminate the agreement, effective September 1987. Shortly after, an out-of-court resolution was reached. The province then had accumulated, for these 50 officers, \$4.1 million in arrears, and it paid that. The Metropolitan Board of Commissioners of Police absorbed all court security costs for the last three months of 1987.

The province would establish an interministerial committee called the

General Anderson committee to develop a long-term solution to this problem of nearly 20 years. If in December 1987 no solution had been reached, the province would resume payment for the 50 court security officers. No solution having been reached at the appointed date, the province, to this date, is making monthly payments. Last year, in 1988, they totalled \$1.72 million.

In the interim, the number of court security officers has risen from 109 in 1981 to 144 at the present time, due to increased demands for court security and extra courts being opened. In comparison, in 1988, the Metropolitan Toronto Police Force cost us \$3.3 million to maintain the 94 court security officers not covered by the agreement.

On November 17, the Attorney General introduced Bill 187. It received second reading on February 14 and was referred to you, the standing committee on administration of justice, which brings us to this presentation before you today.

I will not go into the provisions of the bill, which are listed on page 6—you are all familiar with that—but move down to some more interesting areas.

As you are aware, the bill is confusing. We are not quite sure what we are responsible for and what we are not. In an attempt to clarify Bill 187, members of the force recently met with Ross Peebles and Dave Henderson of the courts administration branch, Ministry of the Attorney General; Brian Fitkin, sheriff for the judicial district of York; Mr. Justice Howland, chief judge for Ontario; and His Honour Judge Coe, senior district court judge.

Through these discussions and the receipt of written correspondence contained in appendix 2, the force has now ascertained that sheriffs' officers will continue to be responsible for the judge-jury panel and the preservation of decorum within the courts. The figures that I will be giving to you in numbers do not include these sheriffs' officers.

Upon passage of the bill, there will be provisions for a reasonable lead-in. The force will have to replace the 13 OPP personnel presently assigned to court security functions at Osgoode Hall. We will be free to determine the type of security and required personnel to be employed to meet our obligations; i.e., a blend of armed police officers and civilian security personnel, and the cost estimates you will be given give the minimum number of police personnel we can assign to this.

The province's responsibility in the area of court security will be to provide security features in new court facilities and upgrade such features in other courthouses.

Details of the statistical and financial breakdown of the impact of Bill 187 are contained in appendix 3.

In brief and in summary, other than losing the \$1.72 million the force presently receives from the province for the first 50 officers, the force will be required to hire or replace 105 civilian court security officers, five senior court security officers, two staff sergeants, two sergeants, 12 constables and three clerical staff members; in addition, to purchase sufficient uniforms, to purchase portable radios and other accoutrements necessary for the function of their job, to locate and secure appropriate facilities in the downtown core area to house the majority of these new employees, to absorb the cost of recruiting and training these new employees

unless the force can convince the Solicitor General to absorb the training costs, and to increase the strength of the courts bureau from its present strength of 234 to a projected strength of 367, an increase of 133 members.

There are a number of issues I would like to bring forth.

First, the apparent intentional disregard to due process before the drafting of the bill: Upon reaching an out-of-court settlement in 1987, we were definitely left with the impression that consultation would take place prior to the introduction of legislation to deal with the responsibility of court security. Indeed, the Anderson committee report was to be a crucial base for these discussions.

Instead, the Attorney General failed to consult or communicate with this force or any other force prior to the introduction of this bill and will not allow us access to the Anderson report. A little later, you will be aware we have filed for that report under the freedom-of-information provisions and we have been refused. That has gone to appeal at the moment. We are still looking for a copy of the report, naturally.

Police forces have had no opportunity to give dialogue or input into any provisions of the bill.

We will go into the issue of separating the role of the police in the courts and the responsibility for the administration of justice that is contained or referred to in numerous government reports that have been discussing the issue of the responsibility for courthouse security for the last 20 years.

I would now like to introduce Sergeant Rusty Beauchesne, who will give you a brief summary of the reports and leave out those reports you have already had a briefing on.

Mr. Beauchesne: If I could ask you to turn to appendix 4, you may be able to follow my presentation.

Mr. Chairman: Perhaps before you start you would care to tell us why you are called Rusty.

Mr. Beauchesne: Strictly because of the hair.

I would like to start off by just mentioning that the history of the responsibility for the administration of justice and the courts in Ontario is concisely developed in chapters 57 to 60 of the Royal Commission Inquiry into Civil Rights, 1968, hereinafter referred to as the McRuer report. I have a copy in front of me here and I am sure you have all seen it over the years.

I do not intend to review the entire historical development of this field since 1791, as Mr. McRuer did, though I would encourage the members of the standing committee to do so at some stage in your deliberations. Suffice it to say that prior to 1968, the responsibility of providing and maintaining traditional institutions in Ontario, such as courthouses, shifted back and forth between the province and individual municipalities.

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The McRuer commission took it upon itself to examine the machinery of justice in the province in the light of its historical evolution and to make recommendations to the government of the day.



At page 921 of the report, the commission stated: "Is the administration of justice today truly a local matter? We think it is not. It is the view of this commission that the entire province benefits from the protection granted by the law and from its efficient administration, and likewise the entire province suffers from its inefficient administration....It is the people of the province who benefit when the accused is brought to justice."

The commission goes on to say on page 924 of the report: "The administration of justice in its widest sense has passed from being something of merely local concern to a matter of general concern. The provision of adequate and proper facilities to efficiently and effectively administer justice is the common concern and right of every citizen of the province."

The commission at that time had the benefit, the wisdom and the knowledge of William B. Common, who had been Deputy Attorney General of Ontario for eight years. It is interesting to note that when he was asked to comment on the efficiency of the administration of justice, he was quoted in the report as saying he had no doubt that if the province assumed the entire financial cost of the machinery of justice, a more efficient administration of justice and an overall saving of money would result. This was the former Deputy Attorney General of Ontario.

I point out to you that this commission was talking about financial responsibility for the machinery of justice, meaning all aspects associated with the administration of justice. As such, the commission went on to recommend that the province should assume the entire financial responsibility for the machinery of justice, including the provision and maintenance of all necessary facilities and the appointment and remuneration of all persons necessary to administer justice, with the exception of members of municipal police forces and those officials appointed by the federal government.

It is interesting to note that upon receipt of the McRuer commission report the government of the day announced that it would assume the share of responsibility for the administration of justice then borne by the municipalities. In fact, the province did take over full financial responsibility for most of the administration of justice through amendments to various acts, such as the Administration of Justice Act and a number of other acts.

However, for some unknown reason which has never been clear to police forces, the issue of court security was put aside, thereby forcing municipal police forces in most parts of the province to continue staffing the courts and absorbing the entire cost of such for years to come.

It is not surprising then that the Ontario Law Reform Commission in its report on the administration of Ontario courts in 1973 again seized the opportunity to review the role of police officers in the courts. In its submission to the Attorney General of Ontario, the commission agreed that police officers should not be required to perform court-related duties, and that they should be freed to perform the duties for which they had been primarily trained.

The commission went on to say that by doing so, confidence in the courts would be increased by reducing the apprehension that the courts are dominated by the police, a statement that Deputy Chief Scott referred to earlier.

This position was further reinforced one year later, in 1974, when a report entitled the Task Force on Policing in Ontario was submitted to the

then Solicitor General of Ontario. The task force, upon months of deliberation, was able to determine that there were two factors emerging in Ontario—this was in 1973-74—that had the potential of threatening the high quality of policing that had been enjoyed by the citizenry of this province until then.

The first factor identified was a social one based on developing patterns of urban life and changing social norms leading to social conflicts, thereby placing new pressures on the police function. The second factor was one of economics. The task force recognized a real danger of financial limitations, impairing the ability of Ontario forces to meet these ever-changing urban challenges.

As such, the task force went on to suggest that the police should redefine their roles in order to develop a balance among the functions of response, referral, prevention, public education, crime solving and law enforcement in order to reflect the needs of the community.

To meet these objectives the task force commented that certain policing services, such as functions performed by police officers in the courts at that time, should not be part of the police role regardless of economic justification.

In the interest of brevity, I will not dwell upon the Pukacz report, the 1981 contract the deputy chief has referred to and the Zuber report. I believe that Mr. Scott and the previous speakers have eloquently addressed these reports, so I will move on to the Anderson report. I am sure this is not the first time you have heard anything about the Anderson report today from sitting in this room in the last hour or so.

One would think that sufficient studies and reports had been conducted on the issue of court security by that time, but the Ministry of the Attorney General, not yet having heard the recommendation I guess it wished to hear, commissioned General Anderson in 1987 to conduct a study of court security problems in Ontario.

As you know, the Anderson committee report was submitted in the fall of 1987 and suggested alternative courses of action. Some of these I heard for the first time today from Mr. Sterling. The Attorney General has seen fit not to make this report available to the public, as you have heard. One can only speculate that his reasons for not doing so are that the recommendations in the report mirror those of all the previous task forces and studies, and perhaps impose an even greater responsibility not only on his ministry, but also on the Ministry of the Solicitor General in relation to their obligations to provide court security.

Inside sources that have seen the report tell us that Bill 187 is in fact an abrogation of the findings and recommendations of the Anderson report. As Mr. Hampton has already mentioned, Chief Justice Howland alluded to this report in his openings of the courts in 1987 and 1988 and he has even alluded to some of the alternatives suggested by General Anderson.

I should mention that on behalf of the Metropolitan Toronto Police Force I filed a freedom-of-information application, as the deputy has told you, to see the Anderson report back in January of this year, and in February I received notice that my request had been turned down. I have since launched an appeal to Sidney Linden. As you know, he is the Information and Privacy Commissioner. Last Friday, I received notice that my request had now been

turned over to a negotiator. However, I have no notification yet of when my appeal will be heard.

For that reason, I corresponded with Mr. Hampton last week, with a copy to Mrs. Deller, on a request that a motion be placed before this committee to adjourn its deliberations until my appeal and the appeal on behalf of the police force have been heard by the information and privacy office.

Mr. Chairman: Just for the record, the clerk has indicated to me that she never received a copy of that motion.

Mr. Beauchesne: She has not yet.

Mr. Mahoney: She had the original idea.

Mr. Beauchesne: We certainly have conversed about it on the phone as early as this morning, I believe, Mrs. Deller.

To continue, we strongly believe there are good chances of success on the appeal and I respectfully submit that it would be ill-advised for this committee to enter final deliberations until we have had an opportunity to appear before you again in the near future upon, we hope, having had the opportunity to study the whole of the report and not the five recommendations that we have heard about today on page 25 of the report. Perhaps this matter can be addressed again in question period.

I would like to conclude by pointing out that it cannot be coincidental that all of the above-noted reports and studies—I include Pukacz and Zuber which I have not really dwelt upon—have reached very similar recommendations. Yet the Attorney General chooses to play ostrich by trying to either hide or dismiss these reports.

Surely, the learned authorities and researchers who spent hundreds of hours preparing these reports, and the taxpayers who paid thousands of dollars to have them prepared, deserve to be heard and taken seriously. The Metropolitan Toronto Police Force hopes that after its presentation, this committee will give these reports the attention and weight they justly deserve when evaluating the strength of our arguments. Thank you.

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Mr. Chairman: We will address the question of why we did not get a copy of the motion in our next committee hearing which will be dealing with the post office or the fax machines or whatever.

Mr. Beauchesne: It was mailed at the beginning of last week.

Mr. P. Scott: I would like to carry on. I would point out that the recommendations of these noted reports all stated one thing in common. Court functions performed by police officers should not be part of the police role, regardless of economic justification, one says. Another says the provision of court security should be the responsibility of a provincial police force operating under the direction of a courts administration division of the Ministry of the Attorney General. Another, in the alternative, said that to the extent that the use of municipal forces was considered desirable, appropriate arrangements should be made with the municipal authorities involved and adequate funding be provided.

Nowhere in those reports was there envisaged the scenario that is laid out in Bill 187.



I also wish to refer to the Attorney General's responsibility for court security at common law. If this were not so, why would section 1 of Bill 187 add subsection 57a(3) of the Police Act, which repudiates such responsibility?

This responsibility is confirmed by the AG's own legislation. I wish to refer you to the Ministry of the Attorney General Act, clause 5(c), which stipulates that the Attorney General "shall superintend all matters connected with the administration of justice in Ontario."

The province, and more specifically the Attorney General, is the occupier of all provincial courthouses in Ontario. The Occupier's Liability Act, subsection 3(1), states, "An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that persons entering on the premises, and the property brought on the premises by those persons are reasonably safe while on the premises."

The last argument on which we base our claim that courthouse security is not a proper police function is supported by the fact that in the last 10 years or so, the attorneys general and solicitors general of all other nine provinces of Canada were faced with the same dilemma. They saw fit to accept their responsibilities and relieve their police forces from having to perform these duties. In fact, a survey of various police forces across Canada reveals that in many instances, the Attorney General has also taken over the responsibility for the transportation and monitoring of prisoners at courthouses. That survey is detailed in appendix 5 for your information.

The last province to have followed suit is Alberta, which did so just last year. The fact remains that in all other provinces, police forces are only required to supply police officers in the court in those exceptional circumstances where a real threat to security is anticipated. The Metropolitan Toronto Police Force does and will continue to provide police officers in this type of situation.

We ask you why, then, the Attorney General of Ontario is following a course totally opposite to what all the other provinces have recently undertaken. Those attorneys general and solicitors general researched legalities of the question, had studies prepared and debated the issue. We doubt if they could all be wrong and the Attorney General of Ontario be right. I respectfully submit to you that the Attorney General of Ontario knows full well that he is on shaky ground in his interpretation.

I would like to refer to you the contract between the Attorney General and the board of commissioners of police. It was signed voluntarily. It is probably the only legal document before you which really defines the climate, the understanding—

Mr. Chairman: Whose signature is that on there?

Mr. P. Scott: That is McMurtry, sir.

Mr. Chairman: I could not read it.

Mr. P. Scott: It was Phil Givens, for the chairman of our board, and McMurtry and I was present.

Mr. Chairman: I should not have said that, by the way. [Inaudible]

Mr. P. Scott: It does define how we have been approaching it for the

past 20 years, and it does set the climate of understanding that was in place at that time, and probably it will make you, the committee, understand why we feel so aggrieved by Bill 187.

The preamble, the opening paragraph to that agreement, did not happen by accident. It was the result of long negotiations between us and the province of Ontario. It was placed there with the purpose and intent of recognizing and acknowledging the provincial responsibility for courthouse security in this legal and public document. Even part 2 of that bill, paragraph 2 of that agreement goes on to say that, at the request of the Attorney General, the Metropolitan Toronto Police Force will continue to provide courthouse security staff.

Even the number of 50 court security officers again did not happen by accident. When we were negotiating with the province, we had exactly 100 on staff. By the time we got the agreement signed, there were 109. But at that time, the province said, "We cannot afford to assume this responsibility all at one time. They offered to pay for half, which we accepted, and we assumed the other half as our responsibility until such time as the province could assume it.

At the time and in that agreement, in section 14, at the province's insistence, court security officers would wear a uniform paid for by the province and identified with a provincial shoulder flash and cap badge. I might point out that all court security officers are still wearing them to this day.

I would like now to introduce court security officer Bruce Petley. Bruce, would you like to stand up? Bruce is one of our supervisors in the court, and he has been a court security officer for a year. If you would like to walk around, you will see his logos, his flashes. That uniform is clearly distinct from the Metropolitan Toronto Police uniform and is solely a uniform that was designed under section 14 in the agreement and supplied and paid for by the province, even for those that we were funding and had employed.

I would refer you to section 17 of the same agreement. In section 17, it says that if the Attorney General terminates this agreement, under the provisions all court security officers would be offered employment. There can be no doubt in anybody's mind, upon reading this agreement, that it places a responsibility for courthouse security upon the province, and the thrust and intention was to allow the province to assume the responsibility over a time period, to facilitate the setting up of the organizational structure and the management and funding of court offices under provincial responsibility.

This is the understanding which we, the Metropolitan Toronto Police Force, have been working for a number of years. So we had, I believe, a right to feel aggrieved when this bill came down and appeared out of nowhere.

Continuing on, when we refer to Bill 187—

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Mr. Chairman: Could I just ask you to clarify something?

Mr. P. Scott: That is not in the brief. It was an ad lib comment.

Mr. Chairman: No. I want to ask whether section 17 was included in the settlement.

Mr. P. Scott: No. What happened is that when they terminated the agreement one year later—we should assume that they should assume the responsibilities—we negotiated a new agreement in September of that year.

Mr. Chairman: All right, go ahead.

Mr. P. Scott: When we further refer to Bill 187, it contains a clause relieving the Attorney General of his common law responsibilities. Another clause makes the contract that we have in place now unenforceable, and I would ask you how any agency can negotiate a contract in the future facing this arbitrary dismissal of our rights.

The Attorney General seems to be trying to dismiss all the reports prepared for him or for the attorneys general before him. He is also trying to hide the Anderson report. One of the crucial questions is why the Attorney General decided not to litigate the civil action brought by the board of commissioners of police.

I submit to you that an out-of-court settlement was reached because he was afraid of debating the legal responsibilities of court security before a judicial panel because he would then be faced with a judicial decision that placed the responsibility squarely in his ball court. He would have welcomed a court action on this subject. Why did the Attorney General introduce a bill without first sitting down with the police forces in Ontario and giving us some input? What is he afraid of?

On the financial impact of Bill 187 on the police force, Councillor Dick O'Brien will address this briefly. They have prepared a detailed financial impact of the bill. It is sufficient to say that the estimated cost at this time, leaving aside the issues of training and accommodation which we have not decided, is approximately \$7 million. I should point out that this is replacement cost, man for man.

Should the Metropolitan Toronto Police be obligated to form these additional functions, the force will have to look at the real possibility of having to remove personnel presently working in other units of the force. Typically, those units most likely to be depleted are in the soft areas, the areas such as crime prevention and our community programs. The end result could be a reduction of many of our viable community-based programs such as our Neighbourhood Watch, our Crime Stoppers, drug education in the school, school lectures, ethnic relations, etc.

The force presently has standing order 69, which I have included in appendix 6 for your information, which states that this force is committed to community-based policing. This policy came as a result of painstaking examination and evaluation of policing strategies which have existed since the 1950s. The result is a reorientation of priorities involving increased emphasis on prevention and proactive policing approaches to the delivery of services to the members of our community.

In order to meet these goals and objectives, the force has actively sought methods of removing officers from nontraditional policing functions and placing them back into the community. Normally, a police force in Ontario will have approximately 20 per cent civilian staff. We have had a vigorous civilianization program in operation for the last seven years within Metropolitan Toronto. At the present time, we sit at 26 per cent.

The assumption of the court security function would be a regressive step



in this regard at a time when the climate is such that politicians and citizens alike are all crying for greater socially oriented police programs. It would appear to us that the Attorney General and his colleagues cannot agree on the perceived role of the police as we approach the 1990s.

In a similar way to your previous presentation, we have a great concern in regard to the logistics surrounding the bill, such as the type of training required, by whom and at what expense. Can we train them at the Ontario Police College? If we do our own training, which we can do within Metropolitan Toronto, then who is to pay for it?

I should point out that in many police forces, this option to train their own is not available. It is only the larger forces that run their own police colleges.

The accommodation to house approximately 100 officers at the district court at 361 University Avenue, frankly, does not exist. Will there be suitable space available to the force in that building? If not, what available space will be provided? Old city hall and many other court locations are presently operating above capacity and, frankly, they are in deplorable condition. Are there plans to offer the force appropriate housing for the courts bureau in the future?

There is also the question of the level of service. The unique thing about this is that we have all kinds of responsibility but no authority. Somebody else is dictating to us where and how to use our resources, and that is a fundamental breach of management responsibility. You would object to it in any business that you run, and we object to it. It is only sound business practice to do so.

But who will decide on what are sufficient security precautions? If we do not answer a judge, we have been threatened with contempt of court. Left to the discretion of the chief or subject to judicial or political intervention: Whom are we accountable for in this vein? Surely the administration of justice and the security of the court facilities belong together and should be brought together. If that is so, it is a provincial responsibility.

In summary, Bill 187 appears to be a unilateral solution to a problem for which the Attorney General of Ontario refuses to accept responsibility, despite the fact that the studies I have cited and some of his learned advisers have recommended otherwise to him and his predecessors. Further, every other province in Canada has acknowledged and assumed this responsibility.

Though the bill is short, many interpretations and variables are yet to be clarified. The Attorney General is not willing to communicate his intention prior to the standing committee's hearings on such issues I have described as accountability, training, accommodation and the lead-in period.

The greatest impact of the bill is a requirement for the force to replace the bulk of sheriffs' officers presently assigned to the security functions in the higher courts. The financial implication is \$7 million-plus. I know we will have to draw from existing resources in such units as our soft areas, our community programs. We believe it would be an inappropriate association between policing and security function. It would be detrimental to our thrust in the community-based policing initiatives to which we are presently committed.

The Metropolitan Toronto Police Force management team is constantly

faced with a complex dilemma of satisfying the increasing demands for the delivery of professional police services. We operate on a limited budget. Resources and availability of qualified personnel are a major concern.

The provisions of this bill, besides causing a large financial burden, would also create administrative and operational requirements that would have far-reaching ramifications on future police orientation. We would submit to you it would place our force and other forces into such an intimate contact with the judicial system that the citizens' view of the impartiality of our justice system would be impaired.

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It is evident that legal contracts have been ignored, commitments have been broken, court litigation has been required, committee reports have been kept from us and consultation and communication have been denied. In spite of this, we are willing to co-operate with the Attorney General. We have a spirit of co-operation and are willing to work towards a solution to this 20-year-old problem.

Surely we can arrive at a solution after this number of years of study, this number of person-years of research. I would ask you, the standing committee on administration of justice, to be the vehicle which addresses our grievances and also to restore our faith in a system that we in the police force dedicate our lives to.

Thank you, and I would like to pass you on now to members of my committee who have a few additional comments.

Councillor O'Brien: I will say hello to the rest of the committee. Some of them I worked with before on Metropolitan Toronto council and others municipally at different levels. It is kind of interesting to be on this side, having sat on that side listening to deputations at Metro so often.

I would just like to add that with what the deputy chief and Rusty—who obviously is not, knowing enough to file a motion pertaining to the freedom-of-information act—I think I would like to go back to an earlier presentation by Judge Ward Allen who, to anybody who knows him, probably has one of the finest reputations of any judge, of any individual for the meting out of justice itself—because you are a justice committee. The financial implications are important, as they obviously are to me being here on behalf of Metro, as Metro's budget co-ordinator.

As has been pointed out, it is \$7.3 million right now without any of the training costs or some of the ancillary costs involved. That is \$3.40 to every home owner. You in the municipal field know that when we look at things per house, what we normally talk about is 20 cents or 50 cents for an item. Even then we have concerns when we are looking at items of that great a magnitude to each home owner, and this one is \$3.40.

Part of my concern is that I believe it is only the start from the policing and justice position, because we are not only looking at this report; we have been advised by the Attorney General that he is bringing in a report on the revamping of the court system. Why is this bill here when you have not dealt with those recommendations and how he is going to recommend the court system change? Is there going to be added court security? Are there going to be major changes to the court process that, after this has been given to the municipalities, if the bill should pass, will put on them an added burden, of even great magnitude, over and above the \$7.3 million?

This is the committee for the administration of justice. It is going to affect every municipality in this province that has courts, as people have told you—and people from the justice point—better than I. From the economic point, as far as I am concerned, this is an injustice that is being perpetrated on the municipalities of Ontario. I would just like to ask that this committee, which is responsible for the delivery of justice, ensure that the injustice is taken out of this bill and that you recommend its refusal.

Councillor Gardner: I am Norman Gardner. I am a Metro councillor and a member of the board of commissioners of police. I would just like to say that higher standards are required today of police officers than were required a decade ago. Fortunately, the vast majority of officers who have been taken on strength have possessed those qualities that are required today in police personnel.

This requires justifiable compensation for the work that they are expected to perform, and that is more varied as far as police work is concerned today. Municipal police, and particularly the Metropolitan Toronto Police, need greater financial support to combat the increased drug-trafficking activities that are taking place. Metro is a key centre for a lot of drug activities.

It needs increased financial support for the community outreach programs which constitute much of the work that our police are doing today in community service, in our ethnic squads, in our minority police relations, etc. For every one police position that we create, we have to hire five police officers to cover the shifts.

Chief Justice Howland has continually, for the last few years, cried out for improved court security. It appears, from why we are here today, that the Attorney General wishes to pass along the costs of security in courtrooms to the local municipalities and has not offered any explanation for his decision.

We regard this as an abdication of the responsibilities of the provincial government. If justice is a provincial responsibility, then those responsible for justice should assume their financial responsibility through the Ministry of the Attorney General.

Earlier today, Mr. Sterling brought up the Anderson report. I have to sit here and ask myself the question, why was the Anderson report withheld from those of us who have come here to make deputations?

Mr. Chairman: I am not sure if you were present. I think you were, but perhaps because of the way it was done—at the outset, the parliamentary assistant indicated why. Perhaps you do not agree with that, but if you did not hear it, I will have him do it again, if you like.

Councillor Gardner: Okay, I heard.

Mr. Chairman: Fair enough.

Councillor Gardner: Nevertheless, it was withheld, and there were reasons for doing that. Certainly, withholding the Anderson report, in our opinion, must mean that the Anderson report must be embarrassing to the government.

The other thing I would like to add is that approximately 20 years ago,



the province undertook to be responsible for property assessment in Ontario. This was necessary in order to provide an equitable and democratic manner, free from the petty discrimination which existed in some quarters and led to the province taking on this function.

As the former Deputy Attorney General, William B. Common suggested, and it was mentioned in the brief today, a more efficient administration of justice and an overall saving of money would result if the province assumed the entire cost of the justice system, because it would become equitable throughout Ontario. Our citizens deserve as efficient an administration of justice as they can possibly get.

I hope that your committee also feels that our citizens deserve that type of administration. I hope that you will go along with our brief, because the other thing that some of us ask ourselves is whether it is the intent of the Attorney General to reduce provincial government spending and use the funds saved from court security for other purposes, while the added costs of court security get dumped on the municipalities.

Mr. Chairman: Mr. Makuch, you have about four minutes. Unless I have unanimous consent of the committee, there will not be any time for any questions.

Mr. Sterling: This is the last brief we are having today. I am quite willing to —

Mr. Chairman: I will ask for unanimous consent after Mr. Makuch has spoken. If I get it, I will extend it.

Mr. McLean: Maybe he does not want to do it.

Mr. Makuch: How could I resist? I will be very brief. I will make a very brief comment; that is, we are making three basic points to you, and I think they are very important points.

First of all, this legislation runs counter to the basic democratic values and principles of running a court system. That is a very fundamental flaw with the legislation, because the whole idea of a court system is that it should be separate from policing. The administration of justice and security should be done on one hand; policing should be done on the other hand. We are going to have problems if we mix the two. We have a very fundamental flaw with legislation that attempts to do that. That is the first point we have made to you this afternoon.

The second point that we have made to you this afternoon is that this legislation, because it directs us into court security, really deters us from our important tasks, our priorities of community-based policing, building bridges with various communities within Metropolitan Toronto. It really destroys those priorities and redirects us to other areas. That is another important problem and major defect with it.

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The third thing I think we have heard this afternoon is that the legislation is a breach of a commitment that the Attorney General has made with the metropolitan police force and the board of commissioners. We are very concerned about that, as well. We have heard the details of that breach.

Basically I think we are saying, for those three reasons, it is contrary

to those principles, it distorts our priorities and sends us off in the wrong direction in terms of the work that has to be done in policing. Thirdly, because it is a breach of commitment, we do not believe that the legislation should be approved.

Mr. Chairman: We have about two minutes left. As I indicated, if I have unanimous consent, we can extend it. I would like whoever is suggesting it to say until what time they are suggesting we extend it to.

Mr. Faubert: Until five o'clock.

Mr. Chairman: Is there unanimous consent that we continue the hearings until five o'clock? So say you all, as the saying goes? All right, we will continue until five o'clock.

Mr. Gardner: I have to run back and listen to some deputations. We are asking Metropolitan Toronto for money because I am in charge of our grants budget.

Mr. Chairman: I hope you will be as just as we are in that regard.

We have half an hour. We will give 10 minutes to each caucus. Does that work out to 30? I think it does. Math was my short suit. That is why I went into law. The first person I have on the list at the moment is Mr. Mahoney. Mr. Sterling next, Mr. Hampton next and then Mr. Kanter if there is time allowed from Mr. Mahoney.

Mr. Mahoney: I will not use the whole 10 minutes. I think I want to share it with some of our colleagues here. Very briefly, I understood Mr. O'Brien to say that he has estimated this cost of \$3.40 per household. Is he currently getting the \$3 per household that was announced in 1985?

Councillor O'Brien: Yes, but that has nothing to do with it. This is over and above.

Mr. Mahoney: I am reading from your brief. It is not necessarily your brief, but the brief here. It says on page 3 that on March 7, 1985 when the \$3.00 was announced, "The rationale advanced at that time was that the grant was to replace special arrangements regarding court security payments to various municipalities in the province." You had a special arrangement with the province at that time. It was under some dispute and some difficulty. The announcement was made that you were getting \$3.00 per household.

That is the time when, as I recall when I was in your shoes at Peel region at that time, there was the change from a per capita to a per household grant. Do you agree with the statement in your brief that the rationale was that it was to replace those special arrangements?

Councillor O'Brien: There is no doubt that that was part of the rationale that was given to us when we came to this. The other point is that what we are getting now, even the unconditional for this, has been frozen at the 1985 level. We have already been told that the 1988 figures are frozen at this level. Even if you want to do it, at least give us the inflationary increases which you are giving us on everything else.

Mr. Mahoney: I do not want to play games with figures. I just want to know what the impact is. Is it fair to say, if you agree your statement in the brief on page 3, that the net impact on Metro which would still be substantial, is 40 cents per household based on the \$3.00 figure being frozen?

Councillor O'Brien: No, because we have netted some figures.

Mr. Mahoney: I am sorry?

Councillor O'Brien: We have done netting of some of those figures, if you get back into appendix 3.

Mr. Chairman: Appendix 3 comes to \$6.5 million.

Councillor O'Brien: Without the training costs in at all.

Mr. Mahoney: So you are saying it is \$7.3 million with training costs which amounts to \$3.40 per household.

Councillor O'Brien: As a guesstimate.

Mr. Mahoney: You are getting \$3.00 per household. My strong suit was not math either, but I equate that to a still substantial amount of money in your estimation of 40 cents per household.

To the deputy, I want to thank you for your presentation. It was very detailed and very thoughtful. Is it safe to say, though, that the Metro commission, by entering into the agreement way back when—1980-81 I guess it was—to replace the constable content of the court staff with 109 lesser paid civilian court staff, and you subsequently increase those numbers by another—I forget the figure; it is in the brief. You went away from the concept of constables in the courtroom for court security to civilians.

I asked a question of the deputation that preceded you. Do you support that concept of civilian staff providing the security? Leaving out the dollar arguments between the two, do you support the concept of civilian staff, perhaps in specially designed uniforms or some form of outfit, providing court security as opposed to having a fully trained officer who presumably should be on the road or somewhere doing police duties?

Mr. P. Scott: I definitely support that concept, and I believe that police officers should not be in the court except under special response or emergency circumstances or to give evidence on the normal process. Our court officers are professional, they are smart, they are clean, and they do a professional job. I am proud of them. When you say civilians cannot do the job, they have to be specially selected and well trained—

Mr. Mahoney: I did not say civilians cannot do the job.

Mr. P. Scott: The civilian court officers?

Mr. Mahoney: No, I did not say that. I am asking if you support the concept of using properly trained civilians as opposed to police constables.

Mr. P. Scott: Yes, I do.

Mr. Mahoney: Is that not the thrust of Bill 187, albeit to put it under municipal responsibility to perhaps train, etc.? Is it a fair conclusion out of your brief that if this Bill 187 went with a cheque for \$7 million you would be delighted?

Mr. P. Scott: The principle is that the police have no place in the courts at all. The courts and the justice system should be separate.



Mr. Mahoney: But Bill 187 does not speak to whether you put police in the court. Bill 187 simply says that you have the authority to make the decision to perhaps put in trained citizenry.

Mr. Makuch: If I could respond to that, it seems quite clear that it involves the police. Those civilians will be under the direct authority of the police force. They are part of the force. There may be a different uniform, that is true, but—

Mr. Chairman: They are actually reporting to a board or council responsible to the police. Perhaps we could ask the parliamentary assistant to the Attorney General, because I think we are all speculating here.

Mr. Mahoney: I understood from earlier today—and if I am wrong, I would like to be corrected—that either the commission or the council would have the authority to set up the rules and regulations as to how court security would be provided under the bill. Perhaps Mr. Offer could respond.

Mr. Offer: The legislation does not mandate that the decision of the police is that there must be a first-class constable in every courtroom in every courthouse in the province. In fact, in your submission, appendix 2, I think you have submitted a letter from Director Henderson in response to Sergeant Beauchesne's query about whether civilian officers rather than sworn police officers are still an option, and the response is, from your submission:

"There is nothing in Bill 187 which requires police authorities to use fully trained police officers to provide court security. The use of civilian officers is an option which police forces could examine in meeting their responsibility under the proposed legislation."

Councillor O'Brien: It is still under the police.

Mr. Mahoney: It was the issue to my question, and that question was: Are you in agreement with using properly trained civilians to provide court security? I think Mr. Sterling's point is that those people would be under the auspices or the direction of the police, but they would clearly not be police constables. We may be playing semantic games—

Councillor O'Brien: That is what I am trying to say; it is still under the police.

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Mr. Mahoney: Yes, I understand. Thanks, Mr. Chairman.

Mr. P. Scott: Under the present situation, we have 144 court security officers who are under our direction. They are under our control. We promote them. We transfer them from job to job. We evaluate them. The officer in charge is sitting here.

Mr. Mahoney: Under the new bill you would simply have more?

Mr. P. Scott: Then we should not have them. That is correct.

Mr. Makuch: It should not be that way, that is the point.

Councillor O'Brien: That is the fundamental argument against Bill 187.

Mr. Beauchesne: If I may also, Mr. Chairman, in my discussions with Chief Justice Howland and Senior Judge Coe on this matter, it was made quite clear to me that the judiciary expects a blend of police officers and civilians at the least in the courtrooms, upon passage of this bill. I think it is unfair to say that all members would be civilians. Certainly, a good portion of them would be and I think we have reflected that at page 8 of our report, where we itemize a number of civilians who would be hired and also a number of police officers who would be necessary to monitor those civilians and also administer those civilians.

Mr. Mahoney: Mr. Chairman, I said I would not take 10 minutes, but I have to respond to that comment in that, that is the situation now, with a combination of police officers and civilian officers, if you want to call them officers, providing court security. Bill 187 simply says that would continue, with the police having all of the jurisdiction as to setting the numbers, etc. In fact, you even refer to the fact that you would replace the provincial OPP in the court.

Mr. Chairman: I am sorry, Mr. Kanter. The time has expired. Mr. Sterling, you are next.

Mr. Sterling: Basically, the way I see this legislation is that it really does not do anything to change the existing system, save and except it transfers a bill for certain court security people, particularly in the Supreme and district courts, from the sheriff, i.e. the Attorney General, to the local police force. Is that basically the thrust of what Bill 187 does?

Mr. P. Scott: I would like to add to that. In the harsh realities of day-to-day bargaining and budgeting, last week, I put 18 court security officers before the budget committee, in answer to the request and the demands from the court system. They were wiped out.

Mr. Mahoney: There is your problem.

Mr. P. Scott: No. I know what will happen if we have to assume this responsibility. When I talked about lowering the level of security in the courts and on the streets, I know that I will not get the resources to do this from my budget chief. Therefore, I will still complain and rob Peter to pay Paul. Then I will take people from operational units to move into the courts. The level of security then will be minimized, because I have to prioritize my resources. Again, I am affecting the resources out there.

When I look at that \$7 million, that is nearly doubling my present court-bureau budget. My present court-bureau budget is \$9.3 million and I am going to put \$7.3 million on there. I know that it will be very remote, but I will get sufficient personnel and people—

Mr. Makuch: I would just like to add something to that from the commission's point of view, because I think it is more than just legislating the status quo. The status quo was an interim kind of stopgap solution, based on the assumption that these were the responsibility of the Attorney General and was an attempt to keep things going while the Attorney General, in fact, sorted things out, so that the function could be where it properly should be in that ministry. The legislation is now saying that is the way things should be. This separation of the policing function from the security function, and I do not think it matters a whit whether it is civilians or not, the idea is that it should be separated and the legislation is making that fundamental change in Ontario, which has not been made anywhere else.

Mr. Sterling: I guess I will put my question maybe a different way. Will the people who come into the courthouse: the judges, the bar, the police themselves, witnesses, whoever, will the system be improved one iota because of Bill 187?

Mr. P. Scott: I doubt it. All the figures in this are to maintain the status quo. These are replacement costs, not enhancement costs.

Mr. Sterling: But there is nothing in Bill 187 that provides for better training?

Mr. P. Scott: No.

Mr. Sterling: That provides for better co-ordination, for better protection? I mean that is what I am saying. Bill 187 was brought into the Legislature, in my view, to say, "There is a mess out there and this is the way we are going to clear it up." As I understand what is going to happen, there is still going to be a mess out there to a certain degree. The only difference will be that the sheriff will not be in the position of having to provide security primarily in the district courts and Supreme Court. Now that will be the responsibility of the local police. That is the only change we really see in Bill 187, which is really a transfer of financial responsibility. In a transfer of financial responsibility, probably there will be a squeeze and perhaps the security of the courts will be less than it is today.

Councillor O'Brien: Commenting on that from the financial viewpoint, I do not think there is any doubt that it will not improve with this bill. I think it will actually go downhill. But as I say, I certainly do not see anything on your comment, "Will it improve it?" No, it will not. It will, as the deputy chief pointed out, make it more difficult for him to deploy the dollars he has available.

Most of you are ex-municipal politicians. You know we only have so many dollars. You know we cannot keep putting this added burden on the realty property base, which is what we are doing. We do not have the luxury of those other income-producing methods, those other taxing methods, that the province has.

Yes, I think there will be an overall negative effect on policing as a whole—not just the courts but policing as a whole—throughout Ontario by the passage of this bill because of those tight dollars and because we can no longer afford to do everything we have to do. There are only so many bucks. I hope, through this committee, that we do not get another load put on us, that you retain it where it has been and that you keep the two systems separate. But let's keep the system growing and not hurt it.

Mr. Sterling: Part of my concern, of course, is the financial concern. I can understand particularly your concern, Mr. O'Brien, as you are the budget control councillor or chief financial officer, in a political sense, for Metropolitan Toronto. In addition, I am concerned that if through this Legislature we do put a lot of noses out of joint, be it municipal noses, taxpayers' noses or anything, we get something back in return for it.

Councillor O'Brien: I am saying you will not.

Mr. Sterling: I have come to that conclusion as well. I just do not see the positives in this legislation. Effectively, what probably will happen



is that some of the sheriff's employees will be employed by Metropolitan Toronto after this legislation goes through, if it goes through in the present form.

Councillor O'Brien: We cannot afford those rates, Mr. Sterling. We have to pay them at the Metro rate.

Mr. Sterling: I think it is unfortunate that the Anderson report is not in front of the committee, in that the very last page of it points out the various responsibilities for court security as Anderson has looked at it across the province. It clearly shows that there is mixed responsibility in some family courts, criminal courts and district courts and in the Supreme Court. The thing it shows more than anything else is that the sheriff's responsibility basically is for security in the Supreme Court and district courts. That is the crux of this particular problem. While I think we got the impression from the Attorney General's staff this morning that there was not going to be much change in terms of what happened before Bill 187 and after, I surely do not get that conclusion from looking at this chart in the Anderson report and from what I am hearing.

Is there any way we can amend or deal with Bill 187 in a constructive way to make the court security system better, or is it really a question of challenging it head on?

Councillor O'Brien: On some of those points of Mr. Sterling's that I think I should address, first, I made the suggestion earlier that Rusty Beauchesne had made the suggestion there was a notice of motion coming forward pertaining to waiting until the freedom-of-information case was heard.

Second, I put forward the proposal that the Attorney General's report itself, looking at the new court system, should be delayed so that you can look at in totality, because if you look at it in totality possibly some of the concerns you are bringing up might be answered. We might see some of those improvements people are saying are in Bill 187, but which none of us see. Possibly, a solution could be for this committee to recommend dealing with those reports in totality, so that we could deal with the court system in totality as opposed to dealing with it piecemeal, which is what we are doing now in my humble opinion.

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Interjection.

Councillor O'Brien: I certainly have. My secretary makes me that way now, Mr. Mahoney. You know her.

Mr. Sterling: The only thing I would put in response to that is that I am not really hopeful the Zuber report is going to be dealt with in the near future. It is a very large issue. I do not know whether waiting for that to happen will resolve whatever difficulties there are, although as I said before, I do not think Bill 187 resolves any problems. There is the status quo, leaving it as it is even though it is a bit of a mess. That does not really unravel the mess that exists. The police forces, the sheriffs and the Ministry of Community and Social Services have worked with the present system and I guess they could work with it for another two or three years.

Councillor O'Brien: My only other comment is that I have heard from various people—as a matter of fact, out in the hall—that Mr. Scott's report

was going to be available in a short few weeks' time. I would have to take that, from where I heard it, as being fairly accurate.

Mr. Hampton: I want to thank you for enlightening us on this. I have found the two presentations this afternoon really worth while, in that you deal not only with that niche we call court security, but you have tried to enlighten us as to how it will fit into larger issues.

I want to ask you this: Just looking at Metropolitan Toronto, is there a serious problem in court security? Are there some serious problems out there in terms of court security—protecting judges, protecting the procedures of the court and protecting the public?

Mr. P. Scott: At every opening of the court, Mr. Justice Howland gives a very eloquent speech and lays out the number of weapons that are involved. There is a serious problem with courthouse security in the facilities, for instance; they are entirely inadequate. We have 170 prisoners in facilities that should be for only 40 or 50 for security purposes. The problem you have had, and one of the interesting things is, is there anything you can do with Bill 187? I think the bill is flawed. I really do not think you can do much to deal with those three paragraphs to improve it.

On the courthouse security, you have had a continuing situation where we have turned to the province and said, "It is your responsibility." We have been reluctant. Even though we have increased it and have 94, from our original 50, in order to respond to it, the province has not increased its 50 that it started off with. So I am afraid what has happened is that the justice system is caught between two opposing factions; it is between a rock and a hard place. The province naturally has been very resistant to supplying any more than the 50 officers we have. We are very reluctant to supply any more of the officers because we believe it is a provincial thing.

Therefore, generally, I would say that courthouse security needs some improving. Courthouse facilities definitely need a great deal of improvement. I will offer the committee a tour of it. Just make sure your life insurance is paid up.

Mr. Chairman: I have had the odd tour of it.

Councillor O'Brien: What about other members of the committee? I found it invaluable. I think the committee would.

Mr. Sterling: Notwithstanding that, I understand the record is pretty good even in terms of the mishmash we have now.

Mr. Chairman: Were you allowing a supplementary there, Mr. Hampton?

Mr. Hampton: Mr. Sterling has been most co-operative with us and we have been most co-operative with him. It is the government we are having trouble with here.

I would like to take the offer up to have a tour.

Mr. Chairman: He will not go. I am sorry; go ahead.

Mr. Hampton: I seriously think it would be a good thing for the committee to do.

Mr. McGuinty: I support that.

Mr. Chairman: We have been advised by the clerk that we will have some time on Wednesday afternoon, for those of you who would care to go.

Mr. P. Scott: We would be happy to set it up, Mr. Chairman.

Interjections.

Mr. P. Scott: I think you might find it very interesting. Is it possible for the committee to attend in the morning? If they really want to see what it is like—

Councillor O'Brien: That is when the activity is.

Mr. Chairman: If the committee members are interested, somebody should make a motion.

Mr. P. Scott: We start bringing the first prisoner in at 6 a.m., so I suggest that 9 or 10 would be reasonable.

Mr. Chairman: Wednesday morning is a problem. We have scheduled these hearings.

Clerk of the Committee: There are two options the committee has if it wants to go and if the morning is the best time. Currently, the hearings schedule takes us to Wednesday at noon. If you want, I can try to reschedule those people in the morning for the afternoon and we could take the tour on Wednesday morning. The alternative is to go through those hearings Wednesday morning and visit the courthouse Thursday morning, but that is going to cut into your clause-by-clause time.

Mr. P. Scott: Thursday would be ideal.

Mr. Chairman: Let's have a motion from someone as to—

Mr. Hampton: Could we hear from the deputants? What would Thursday morning be like?

Mr. P. Scott: Mr. Lovegrove, the officer in charge of the courts, says Thursday morning would give you a fair sampling of what to expect. It is a middle-of-the-week day and would not be tragedy day or anything. It would give you a fair evaluation. He has suggested Thursday.

Mr. Chairman: This is the old city hall facility we would be seeing. Would you care to show us Brampton?

Interjections.

Mr. Chairman: I think if you go to any of them, you will get the same flavour.

Mr. P. Scott: The time is open to suit your members. Just to make sure we are not—

Interjections.

Mr. Chairman: Mr. Hampton moves, subject to advisement from the deputants, that we attend at the court at old city hall at such time in the morning when we can have a tour of the facilities and also encounter the types



of security problems that occur on a regular basis so that we get a fairly comprehensive view of what goes on over there.

That sounds like a lawyer's motion. That sounds pretty good.

Mr. Faubert: You have to put a time on that.

Mr. Chairman: Perhaps we could leave it to the clerk to work it out. Is that appropriate?

Mr. Kanter: I have no particular difficulty with the motion put by Mr. Hampton. I presume it would be a morning that we would be attending. I am just wondering, though, if it is relatively as busy Tuesday, Wednesday, Thursday, that kind of thing, if we might make this visit before we start on our clause-by-clause consideration. I am a little concerned about the idea—

Mr. Chairman: That is what you would be doing.

Mr. Kanter: Perhaps Wednesday. Would that be a possibility? I am just a little concerned that we might break up our clause-by-clause.

Mr. Chairman: The clerk has indicated it would be her advice that we go on Wednesday morning and she will reschedule the deputants we had that morning. Can we take that motion, leaving the time to be worked out by the clerk with those who will provide us with that arrangement?

Mr. Sterling: I do not think it matters. I am going to be here Thursday. I do not know whether the other members of the committee are going to be here, but I do not imagine clause-by-clause is going to take a great deal of time. I do not have any amendments. I imagine an hour or so is going to be what—

Mr. Hampton: I can let you in on a secret, Mr. Chairman. We will oppose the bill in its entirety.

1700

Mr. Chairman: We have reflected on it and the clerk, through me, is offering that we do it Thursday morning because we have nothing on other than clause-by-clause and we could then deal with clause-by-clause. Perhaps we could do it as we went on the tour. Is 10 o'clock all right?

Mr. P. Scott: No problem. Any time you wish.

Interjection.

Mr. Chairman: Nine o'clock is better?

Mr. P. Scott: Nine o'clock seems better. You have general activity at that time.

Councillor O'Brien: You do. At nine, they swing open.

Mr. P. Scott: You will not be interfering with the judges in their courts to some degree.

Mr. Chairman: We do not want to do that.

Councillor O'Brien: Maybe 10 is a good idea.

Mr. Chairman: Those in favour of nine o'clock Thursday morning for a tour of the city hall facilities?

Motion agreed to.

Mr. Chairman: Thank you for the offer.

M. Hampton: May I carry on with just a couple of questions, since there was a lot of discussion that was not my discussion that ate into my questions?

Mr. Chairman: It was your discussion. However, you have one minute left, so if you choose to use it, go right ahead.

Mr. Hampton: I want to thank you for writing to me, Mr. Beauchesne, about the difficulty you face. I intend to put the motion you have asked me to put tomorrow. The reason I would like to put it tomorrow is so the other members of the committee will have a chance to deliberate over it.

Mr. Chairman: Most specifically me, because I have to rule on it as to whether it is in order or not.

Mr. Hampton: That is right. I can put the members of the committee on notice right now that subject to what I may learn this evening, I will basically move that we reserve time for deputants to obtain copies of the Anderson report or to ask again for copies of the Anderson report, so that they may come to the committee with the nuts and bolts of this issue more appropriately in their hands.

I just do not understand how we expect deputants to come before this committee, present all the logical arguments and analyse the information at hand, when they have been denied some of the most basic information. So that will be the content of my motion, which I will present tomorrow.

Mr. Chairman: Do you have any notice in writing?

Mr. Hampton: I will put that in tomorrow morning.

Mr. Chairman: I just want to ask one question by way of clarification. As you notice, I do not get a chance to ask many questions up here.

I notice that under appendix 3 there is a listing for the cost of feeding prisoners 9,200 meals. Is that your responsibility even presently? Is that not paid for by the Ministry of Correctional Services or the Ministry of the Attorney General?

Mr. P. Scott: That is our responsibility.

Mr. Chairman: Is that the same in all jails throughout the province?

Mr. P. Scott: Yes, to my knowledge. They may have individual arrangements, but we budget for and feed the prisoners while they are in our custody and while they are in the holding cells at city hall. We budget for and feed them.

Mr. Chairman: I notice there was nothing in the agreement you negotiated that provided for that cost. I was just curious as to that situation.

We will have the motion of Mr. Hampton. We do not want to delay people who are deputants and have them sit around here while we—

Councillor O'Brien: There is another bill that sitting out there pertaining to videotaping prisoners so that those can be taken into the courts. Is that also coming before this committee prior to it being—

Mr. Chairman: In terms of statements being taken?

Councillor O'Brien: Yes, so that the transportation of prisoners is not always mandatory.

Mr. Chairman: It is my understanding that was a pilot project in the region of Halton and has not been expanded to other areas. I do not know of any bill that is before the Legislature.

Councillor O'Brien: My understanding was that it was coming back fairly soon for an expansion of that.

Mr. Chairman: You must have a pipeline we do not have.

Mr. P. Scott: I think I can clarify. You are talking about two different subjects. One is actually the videotaping of confessions or statements by a prisoner. It is a pilot project in Halton and it is continuing in operation in three districts within our force. We do that as a fairly common practice.

The other one is video remanding of prisoners. It is a pilot project we have instituted with the Ministry of Correctional Services and the Ministry of the Attorney General in order to try out the remanding of prisoners. As you know, statistically, in excess of 80 per cent of prisoners go to court to be remanded; they do not go to trial. It is a noncourt process. In fact, estimates in some jurisdictions are up to 92 per cent.

At the end of this month, there will be a pilot project between old city hall and the Don jail in order to try this. The major problem is that we are going to run three court calendars through the system. Frankly, I do not know whether I am off the record or not, but off the record, we have to have—

Mr. Chairman: You are on the record.

Mr. P. Scott: Okay. Then it needs to be tested by the judicial system. If not, every case that will run through the system has been (inaudible). That testing by the judicial system for a lawyer to appeal the remand process by video would probably take six or eight months to a year. So there is no immediate relief in sight.

Councillor O'Brien: Can I respectfully suggest you take a look at that as well because that has a major bearing on courtroom security for judges in this whole program. As I say, you are dealing with a very large overall problem here that is trying to be addressed. Bill 187 does nothing but exacerbate it, whereas with all these other programs, if they were taken into consideration, I think you could come up as a committee with a very workable solution.

Mr. Chairman: I understand that we will be receiving a brief on that tomorrow as sort of a last minute fill-in. I understand we will be receiving something from the Attorney General on that. No? All right. I got my wires



crossed. The clerk has indicated to me there is a professor from Brock University who wishes to address us. We have slotted him tomorrow morning, so if you are interested, come on along.

Mr. P. Scott: I very much doubt that you are going to receive a brief on it because there are only three agencies dealing with it as a pilot project. I would be interested to know who is doing the brief.

Mr. Chairman: It is not specifically the pilot project you are discussing. It is someone who wishes to come before us to indicate to us that this is available, how it is done and so on.

Mr. P. Scott: I am prepared to give the committee a videotape. It is about 11 minutes long, which explains it all, goes through the Supreme Court, its use of it, what we intend to do and the savings.

Mr. Chairman: It has already been used somewhat in hearing appeals in the Supreme Court of Canada for people who live in other provinces.

Mr. P. Scott: Yes, it has.

Mr. Chairman: It has not been challenged there.

We stand adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 5:08 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

POLICE AND SHERIFFS STATUTE LAW AMENDMENT ACT

TUESDAY, MARCH 7, 1989

Morning Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Faubert, Frank (Scarborough-Ellesmere L) for Mr. Chiarelli

LeBourdais, Linda (Etobicoke West L) for Mr. Mahoney

Clerk: Deller, Deborah

Witnesses:

From the York Regional Police Force:

McClenny, Lowell K., Superintendent; Officer-in-Charge, Support Services

Cousineau, Bryan, Deputy Chief

Individual Presentation:

Baar, Dr. Carl, Visiting Professor, Department of Political Science,  
University of Toronto

From the City of London:

Gosnell, Tom, Mayor

Shipley, N. LaVerne, Chief, London Police Force

Hopcroft, Grant, Alderman

Johnson, Mervyn, Deputy Chief, Zone 6, London Police Force; Director, Ontario  
Association of Chiefs of Police



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Tuesday, March 7, 1989

The committee met at 10:10 a.m. in room 228.

POLICE AND SHERIFFS STATUTE LAW AMENDMENT ACT  
(continued)

Consideration of Bill 187, An Act to amend certain Acts as they relate to Police and Sheriffs.

Mr. Chairman: I recognize a quorum. The first deputation this morning is from York Regional Police: Lowell McClenny, superintendent; Bryan Cousineau, deputy chief; Barry Delaney, inspector. Welcome, gentlemen. Perhaps you would like to take seats. For purposes of Hansard, the presenter might identify the people who are with him. Then you can proceed to read your brief, or if you wish to just simply address the committee, that is fine. The time is yours. You have half an hour. The time that is left after your presentation, we have unanimously agreed, will be divided equally among the three parties for questions. Perhaps you will even hear leading questions, statements or whatever, but that is the rule. Perhaps you would like to proceed.

YORK REGIONAL POLICE FORCE

Mr. McClenny: I am Superintendent Lowell McClenny of the York Regional Police Force. I am in charge of support services with our force. On my immediate right I have Deputy Chief Bryan Cousineau, and on my left I have Inspector Barry Delaney, who is in charge of our centralized services and is basically responsible for our courts.

Before I begin, I would like to mention that our presentation is very short this morning, and we hope to the point. We are basically here to support the Municipal Police Authorities, the Association of Ontario Chiefs of Police and the Association of Municipalities of Ontario, whom you heard from yesterday.

On behalf of the York Regional Police Force, I would like to take this opportunity to thank the standing committee on administration of justice for allowing us to attend here today. The following is a brief outline of what we feel will be serious implications that the Police and Sheriffs Statute Law Amendment Act, 1988, will have on the York Regional Police Force, and in particular the residents of York region.

At the outset, I would like to say that on November 22, 1988, our chief of police, Donald Hillock, was advised of these proposed amendments to the Police Act and the Sheriffs Act only by copy of a memo forwarded to him by Sheriff George Taggart of the region of York. It is interesting to note in the Honourable Ian Scott's statement to the Legislature that the general principle of this bill was discussed with the Courts Advisory Committee, composed of the chief justices and chief judges of the courts in the province, and also his statement with respect to ensuring that trained police officers be used as security for the courthouses.

At the present time our court bureau, which is located at 50 Eagle Street West in Newmarket, is staffed with 13 sworn police officers who are responsible for transportation and protection of prisoners in the provincial courts, criminal division. They are also available throughout the court building when the need arises. When required, this bureau is complemented by regular officers and/or members of our emergency response unit at all levels of the courts where dangerous accused or witnesses are participating.

Historically, the custodial duties and court security for the district courts, criminal, civil and young offenders under 16 years of age have been the responsibility of the sheriff's officers.

At the present time, Sheriff George Taggart has five deputy sheriffs and 17 sheriff's officers performing these duties when required in the various courts. It should be noted that these 22 officers are hired on a contract basis, on call 24 hours per day. It is unknown how often the judicial system requires all 22 on any given day.

Without conducting a lengthy review of court calendars, we would be hard pressed to say that our force could fulfil all the obligations carried out by the present sheriff's department with less than 22 additional staff within our court bureau, as it is vital that all judges and persons attending the court building receive adequate protection.

Based on the Ontario Police Commission budget and resources report, police cost per professional hour was \$40.37 during 1988. As a result, it cost \$1,091,604.80 to operate our court bureau. In return for that, the province of Ontario, in its unconditional grant to the region of York, contributed \$335,878.40. In order to add 22 trained police officers to the present court bureau at the regular rate of officers' wages, it will mean that \$1.1 million will have to be added to the 1989 police operational budget. This would bring the total estimated cost for our court bureau for 1989 to approximately \$2.3 million.

Although the officers may not be required daily for court security purposes, we cannot afford to remove officers from their other duties to perform these functions on an ad hoc basis. Due to our drastic growth and the annualization of our 1988 budget, any increases in costs for our present court bureau staff would be more than the taxpayer in York region should have to bear.

In reviewing this matter, I bring your attention to the fact that municipal police forces in Ontario have vigorously supported the Solicitor General (Mrs. Smith) in connection with an enhanced Reduce Impaired Driving Everywhere program, community-based policing initiatives, drug enforcement and education initiatives, as well as domestic violence, multiculturalism or ethnic units, victims-of-crime units and generally enhanced crime prevention programs, all of which have a financial impact on our budgets.

It should be noted that the Honourable T. G. Zuber, in his Report of the Ontario Courts Inquiry published by the Ministry of the Attorney General in 1987, on page 286, section 96, entitled "Court Security," stated:

"The provision of court security should be the responsibility of a provincial police force operating at the discretion of the courts

administration division of the Ministry of the Attorney General. To the extent that the use of municipal police forces is considered desirable, appropriate arrangements should be made with the municipal authorities involved, and adequate funding should be provided for that purpose."

If this bill is enacted, I question whether the government realizes that it takes several months to recruit and properly train police officers for this function. The passing of this bill will also negate our chief's plan to staff the court bureau with civilians during 1989.

Courthouse security is of utmost importance. However, we strongly believe that it is the responsibility of the province to supply the funding. Further, the responsibility of the police should end when an accused is first incarcerated. To continue escorting a prisoner and providing security within the courts would increase the financial burden already carried by the taxpayers.

Again, on behalf of the York Regional Police Force, I thank you for allowing us to attend here today to speak about a matter which we feel will have an adverse effect on all forces within the province of Ontario.

Mr. Chairman: Thank you very much. Are there any other comments before I open up the floor to questions by members of the committee?

Mr. McClenny: No, sir.

Mr. Chairman: Members have eight minutes each.

Mr. Hampton: I want to deal, first, with your quotation of Mr. Justice Zuber. I guess it is on the second-last page of your brief. Have you looked at the history of this matter of court security? It is my understanding that Mr. Justice Zuber was not the first nor the last person to look at the question of court security and to remark that it needed some careful attention. He was not the only person who advised that the province should have responsibility for it or the province should be very closely involved with the provision of court security. Have you looked at any of the other comments from other experts or other persons?

1020

Mr. Cousineau: You were referring to General Anderson?

Mr. Hampton: That is one.

Mr. Cousineau: We have not been privy to that report.

Mr. Hampton: So you have received no information—

Mr. Cousineau: We are relying on Justice Zuber's report.

Mr. Hampton: If I told you that the Anderson report is a fairly thick document which goes into this in some detail and talks about the nuts and bolts of court security from different perspectives, would you feel that that is probably a germane part of this discussion and that it is something that we all ought to have a look at and all ought to be able to analyse and come to our own conclusions on?



Mr. Cousineau: I would think the standing committee should have whatever information is available to it before a decision is made or a recommendation is made.

Mr. Hampton: For the purposes of your own brief, if you have the opportunity would you like to have a look at the Anderson report to see exactly what it says and what it spells out in terms of what the gains are, what the losses are and what the tradeoffs are?

Mr. Cousineau: Certainly if it is in relation to any court security problem, I am sure every force in the province that will be affected by the pending legislation would like to see his comments on it as well.

Mr. Hampton: You refer in your brief to the growth that is taking place in York region. Do you have any statistics to indicate what that growth is or how quickly the population in your area is increasing?

Mr. Cousineau: The population in York region in 1971 was 165,761. As of the end of 1988, we are informed by the regional municipality that it is 431,000. We have sustained substantial growth within the past three or four years.

Mr. Hampton: Your court bureau is in Newmarket?

Mr. Cousineau: That is right.

Mr. Hampton: What court facilities do you have in Newmarket?

Mr. Cousineau: We have all levels of court in Newmarket, from provincial court up to the Supreme Court.

Mr. Hampton: I see. Some weeks ago, when I asked the Attorney General (Mr. Scott) about problems of court backlogs and problems of the courts dealing with all of the criminal matters and civil matters that come before it, if I am not mistaken he referred to the urban region around Toronto as one of the areas that has serious court backlogs and is having difficulty keeping up to the demands that are made on the court. In your knowledge, is that true in your region?

Mr. Cousineau: We are undergoing a backlog problem in that a lot of our trial dates are being set well into next year. However, the court system is also very fair with us in that regard. Should an urgent need arise to have a relatively quick trial, they certainly tend to our requests, both the crown and the defence.

Mr. Hampton: You do have some problems with backlogs?

Mr. Cousineau: Certainly we have a backlog problem in our court system. It is serious, for instance, that a person could be arrested and charged with impaired driving and have to wait 13 to 15 months for a trial; that is unfair to that person.

Mr. Hampton: To your knowledge, can this create or has it created difficulties in terms of court security and in terms of jammed courtrooms?

Mr. Cousineau: Volume is a problem with us.

Mr. Hampton: Have you had any serious security problems? I know that Brampton has and I know that old city hall in Toronto here has. In fact, in Chief Justice Howland's report in 1988 he refers to the fact that the lives of some members of the judiciary may be threatened at old city hall. Have you had instances like that?

Mr. Cousineau: No, I do not think we have. We have a relatively new court building that was opened in 1980, I believe. It is certainly a very secure building. We did have had a prisoner escape on us, but he was shortly recaptured. No members of our judiciary have been injured. That is not to say they may not have received threats, but that is not too uncommon in various parts of the province where members of the judiciary at one time or other may have received threats.

Should that have come to our attention—and there has been an instance or two where that has happened—then security is provided forthwith by the police force through our response unit, as indicated in our report.

Mr. Chairman: You have about a minute more.

Mr. Hampton: I will let it go for now and will take it at the end.

Mr. Chairman: Take it now or forever hold your peace, as it were.

Mr. Farnan: There is a very impressive list on the third page, I believe, on which you list a variety of programs in which the police forces are involved. It just struck me this morning that there is an article on community policing to which I probably should direct members of the committee, which appeared in the Globe and Mail. I am not sure if you had a chance to see this in this morning's Globe.

It does talk about the increasing importance of what they call community-oriented policing. Obviously it puts great demands upon the police force in terms of personnel plus all of these programs. When you evaluate Bill 187, do you see it as a bill that could take away from these important programs, like Reduce Impaired Driving Everywhere, drug enforcement, domestic violence, victims of crime and working closely with the community? Is there a danger with this bill that police involvement with the community could be eroded?

Mr. Cousineau: There is certainly that possibility. The regional municipality will vote on our budget very shortly, as all municipalities will. If this legislation is passed, then additional officers will be required for the court system. If the region does not provide funding to hire additional people, then they have to come from somewhere. Where exactly they will come from has not been decided yet, but that possibility exists.

Mr. McGuinty: Among the groups with whom we spoke yesterday, there seems to be some confusion regarding the person who would be empowered with this court custodial duty. You allude to a statement by the Attorney General on the first page of your brief, a statement with respect to ensuring that trained police officers be used as security for the courthouses.

Later on you refer to the fact that it would be necessary to add 22 trained police officers to the present court bureau, and later you refer to the time it takes to properly train police officers for this function.

In a backgrounder that we were provided with regard to the intent of this bill, it was emphasized that the bill does not require police authorities to use fully trained and sworn police officers to provide court security. What is your understanding on that?

Mr. McClenny: My understanding is that we would be required to put trained police officers in the court buildings as security. That is my understanding.

Mr. McGuinty: Conceivably, then, you might have to take trained police officers who could be more effectively deployed, in your view, in other activities.

1030

Mr. McClenny: Yes, that is correct. My interpretation would be, in discussing it with our chief, that we would have to remove these trained police officers with experience from the street, officers who would have an idea of what to look for and have been around for awhile, not just hired for that specific purpose and trained and brought in there without any experience on how to handle or observe or deal with these types of situations in a court building.

Mr. McGuinty: Sure. Another thing: The bill was criticized for not adequately defining the guidelines for training and so forth. My personal view is that that is something that is clearly within the competence of the police to determine. Would you agree with that? In other words, given the nature of the protective custodial duties, the police would be the ones best qualified to train people for that role.

Mr. McClenny: It is very hard to answer that because I know other courts, other judicial districts, use civilians who are qualified and well trained to perform the same duties. As a police officer, I would like to think we have the best and we are qualified to do that type of work; but given the proper training, I am sure in some districts they have civilians who are competent and doing the job as civilian court officers, if that answers your question.

Mr. McGuinty: Yes; thank you.

Mr. Chairman: We still have five minutes. Mr. Faubert, do you want to clarify that issue?

Mr. Faubert: Who is doing the job of the 22 trained police officers whom you would be required to hire, according to you? Who is doing that job now?

Mr. McClenny: The sheriff's office.

Mr. Faubert: Is it your understanding that this legislation requires you to replace the sheriff's officers with trained police officers?

Mr. McClenny: That is correct.

Mr. Faubert: Did you get that simply from the statement, or is that your interpretation of the bill? Have you discussed this with the officials at the ministry, or is this your interpretation of the bill itself?



Mr. Cousineau: Sheriff Taggart indicates that his staff of 22 is required to provide security in the courts. We have a number of Supreme Court sittings, district courts, provincial courts, both civil and criminal courts, and as far down as the lower-level provincial offences court. He feels confident that his 22 people can provide that security. The legislation did not tell us what degree of security is expected once the police take over the security if the legislation goes through. So we can only assume that if he has 22 we will require 22 officers to provide that security.

Mr. Faubert: Are you providing other services with officers in the courts now?

Mr. Cousineau: Yes, we are. That is through disclosures, operating the police office in the court building, disclosures to defence counsel, assisting crown attorneys with the setting of trial dates and updating our—

Mr. Faubert: That is administrative and not security.

Mr. Cousineau: It is more an administrative than a security function. We are providing security on provincial court prisoners at this stage as well.

Mr. Faubert: And the bringing in of prisoners.

Mr. Cousineau: From the detention centres.

Mr. Faubert: Are those officers specially trained?

Mr. Cousineau: They are first-class constables: police officers.

Mr. Faubert: So you perform that duty at this time yourself.

Mr. Cousineau: Yes.

Mr. Faubert: The training of them is performed by your force.

Mr. Cousineau: The training is conducted at the Ontario Police College and then they are incorporated into the court bureau.

Mr. Faubert: I just have a little problem with your figures, because they do not actually match the figures that were provided in the Municipal Police Authorities/Ontario Association of Chiefs of Police/Association of Municipalities of Ontario brief.

Mr. Cousineau: That is right.

Mr. Faubert: I just wondered if these figures came from you originally but have been revised.

Mr. Cousineau: I think you will find that figure is the total cost of our court bureau. We are saying that the figure of \$1.1 million is the 22 additional people.

Mr. Faubert: This cost impact for York Region, which according to this report is \$1,134,664, is not accurate? Which is the right figure?

Mr. Chairman: I am not sure we have that document.

Mr. Faubert: No, I just asked if they provided these figures and he said yes. I just wanted to know why they did not jibe, that is all.

Mr. Cousineau: The figures were provided to the MPA would be the total cost for our court operation. We are relying on our submission to the standing committee that the cost is the \$1.1 million for the additional 22 officers.

Mr. Faubert: The amount of the conditional grant also differs. The report says \$385,080, and this says \$335,000.

Mr. Cousineau: The region would have received \$335,878.40. That information would have come from the regional municipality.

Mr. Faubert: Where would this information have come from?

Mr. Cousineau: I am not sure where that information would have come from.

Mr. Faubert: Okay.

Mr. Cousineau: This came from my chief, so I have assumed that is correct.

Mr. Faubert: Okay, we will take these figures.

Mr. Cousineau: Yes, we are relying on our submission.

Mr. Sterling: Yesterday the deputy chief of the Metropolitan Toronto Police Force made a strong argument of a philosophical bent in that he believed the police should not be in charge of courtroom security because there is an inherent conflict of interest. The police are there to prosecute individuals on all occasions, just about, or are involved very heavily in the prosecution; and yet they are, I guess, put in a position whereby they can make the judiciary, the jury and the witnesses somewhat beholden to them in terms of controlling the security under this particular piece of legislation.

That is the situation in a lot of cases already in Ontario, but we were told yesterday that every other province has opted for the Attorney General of the province to run the administration of justice and run the courthouse security in the other provinces, I think based on the philosophical argument.

At the present time, what happens when there is a dispute as to the level of security, say in a particular case? Who makes the final call or who negotiates the settlement?

Mr. Cousineau: Usually it is negotiated between the sheriff of the region and members of our court bureau. It depends, as Mr. Hampton said. If there was a threat on a member of the judiciary, we would want to ensure that threat could not be carried out. The odd time we will run into a conflict, but nothing so severe that it has not been resolved. It is right now a bit of joint venture, so it could be either side.

Mr. Sterling: I suspect the answer is that the sheriff acts as the broker and tries to reach a resolution of the problem.

Mr. Cousineau: And it depends on the court level. If it is Supreme Court or district court, then he insists that they are his courts and he provides the security and solicits our assistance.

Mr. Sterling: Under Bill 187, how are you going to deal with the situation in the future if in fact there is a difference of opinion as to the level of security that the police might deem appropriate and a judge might deem appropriate, or maybe the clerk of a court?

Mr. Cousineau: We feel, and I am speaking on behalf of the chief, that if we are charged with providing security then we would be in the best position to determine the level of the security required.

Mr. Sterling: Therefore, if a judge said, "We need three uniformed officers here, first-class constables," and you deemed that there was a need only for two; the judge would get two, not three?

Mr. Cousineau: He would likely end up with two after we spoke with him, but we would certainly be fair to the—

Mr. Sterling: But you see what I am driving at in terms of the problem that is evolving out of this particular legislation. It not only shoves a significant financial burden from provincial responsibility to a municipal responsibility, but it also puts into the justice system a situation whereby—I do not think that it would happen intentionally, but there could be a compromise as to what in fact is going on; or there could be an appearance, let's put it that way, of a compromise within the judicial system in determining what happens in a case. I mean that could be seen by the public as a compromise.

Mr. Cousineau: In so far as what happens in the case is concerned, certainly we have absolutely no input on that. In all fairness to the judges, who are very competent people, they deal with interpreting the law; and police officers, I feel, are in a better position to evaluate a security threat. That is where I think we would speak to the judge or the clerk of the court and explain our position.

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Mr. Sterling: I guess what is good about the system now is that the sheriff is ultimately the power broker. If he insists there be three uniformed officers in the example I gave, I would suspect that there would be a better chance there would be three officers there than under Bill 187, when in fact the sheriff has no say and basically is going to be excluded from the discussion.

Mr. Cousineau: Yes. Once the police are charged entirely with providing security, then we feel if it is our responsibility we should dictate what is required.

Mr. Sterling: Do you think courtroom security is going to be improved under Bill 187? Will it stay the same, or is there perhaps a chance that courtroom security will be poorer?

Mr. Cousineau: I do not think that it will be poorer.

Mr. Runciman: Just more expensive.



Mr. Cousineau: True, but it certainly will not be poorer. It may stay the same in some regards. It may be increased at various court levels, depending on the need.

The sheriff, as it stands, as his responsibilities are now, may feel one sheriff's officer will suffice in a given situation; whereas we would look at that situation and either agree with him that no police officers are required because there is no threat there, or in fact increase the security. It is just that there are such a number of variables that I cannot say, "That is the answer if this legislation goes through."

Mr. Sterling: There was a feeling by the delegation yesterday afternoon that courtroom security would be compromised. I must say I tend to think that in the real world, where budgets are being squeezed, that in fact might be the result, at least in the short term as this thing works its way through.

If, in fact, your budgets are set, are there, it is going to be hard for you to argue for all of the money you might need to fulfil this function. There was a feeling by the Metropolitan Toronto Police Force that it might be compromised, in that there would be some budget restriction placed upon them.

Mr. Runciman: How much time—

Mr. Chairman: A minute left.

Mr. Runciman: I am just curious. I heard a CBC report recently. Bruce Hamilton, who is the sheriff in Ottawa, was talking about the cost for security in the Ottawa courthouse, about \$400,000 annually, suggesting that this would change under Bill 187, that it was going to increase significantly; something like \$2 million, I believe. I may have a wrong figure on that, but it was a significant increase. Is that something based on the different salary levels of sheriff's constables, part-time constables and so on, versus a police constable? Is that where this significant difference in cost is coming from?

Mr. Cousineau: The wages would be the majority of it, but there is equipment that the officers are required to have, the training they must have before they are sworn in as officers, contractual matters that the officers are involved in with the board of commissioners of police and all that rolled in. But certainly wages account for the majority of it, I would think.

Mr. Chairman: I would like to thank you, gentlemen, for taking time out of what I am sure is your busy schedule and coming here and addressing the committee. We appreciate the information you have provided. Thank you.

The next deputant is professor Carl Baar. He is a visiting professor in the department of political science at the University of Toronto. If you would like to come forward, professor. We are happy that you were able to come and visit us too. You truly are, then, a visiting professor.

CARL BAAR

Dr. Baar: In fact, I am visiting from Brock University in St. Catharines, where I taught for some 15 years. I have developed special studies in the area of the administration of courts, where I have done a great deal of writing. In observing the press reports of the debates on this legislation, I felt that perhaps I could contribute some different perspectives on it.

I think in fact I will be covering material you already touched upon subsequent to my being invited to testify. I will go through that and hope I can give it a somewhat different slant, but I will also deal with other matters, such as the ones members of the committee have raised in questions.

Mr. Chairman: I presume we do not have a written brief. All right. Just to advise you—I am sure you were here—you have half an hour. You can use all or part of that time. If there is some left over, I will divide it equally—this is done by unanimous consent of the committee—among the three parties to ask questions, to make statements—to do what they wish, really.

Dr. Baar: I understand. I will just go quickly through some prepared remarks for you.

The current debate on who should pay for court security ignores the interests of the public. We, as taxpayers, will foot the bill regardless of whether municipal or provincial governments do the work.

The first question members of this committee and members of the entire Legislature should address is how the courts and police can perform their security-related functions more efficiently and reduce the total cost of this activity. Through the co-operative efforts of provincial court administrative officials and large municipal police forces, some real economy should be possible.

I would like to discuss one possibility today: saving the time and cost of prisoner transportation through the use of video for routine appearances and remands. I know this is now a topic which is being dealt with experimentally in Metropolitan Toronto. This makes a lot of sense, because although there may be little cost in the transportation of prisoners when a jail is attached to the courthouse, when this is not the case costs can be substantial.

Metro Toronto is the classic example, with prisoners housed in a number of locations at some distance from the five criminal division courthouses. Every day, wagonloads full of men in custody drive into the old city hall courthouse. To allow time for multiple trips, some prisoners must spend hours in the court's basement lockup. Unionized court employees have expressed concerns about persons with highly infectious diseases.

How would video help? I understand systems of video arraignment are increasingly common in the United States. I observed one such system in the Glendale, California municipal court over two years ago. A courtroom was outfitted with two screens, one facing the judge and one facing the spectators. Another screen is in operation in the jail. The person in custody sees the judge and the judge and spectators see that person. The judge, the accused and the counsel can talk with one another.

Bail and other matters are often handled much more promptly by means of video since the judges begin hearings earlier than the usual scheduled court time. Police express strong support for the system because of the time and money it saves, and jail officials report a decline in overcrowding since accused persons are released earlier in the day than under the old system. Accused persons themselves have expressed satisfaction with the system.

Obviously, the use of video would have to be adapted to Canadian criminal procedure. It may be that certain proceedings are better conducted in person. Appearances done on video would need to incorporate consultation with counsel, either through the presence of duty counsel in the jail or through a communication link with an accused person's own counsel.

In fact, the results in Ontario could be even more substantial than in the United States because our criminal code requires accused persons on remand to be brought before a magistrate every seven days. At the College Park courthouse, only a few blocks from where we sit today, one of the eight criminal division courtrooms is devoted almost full-time to these proceedings.

It would be fairly easy to schedule more flexibly if you were able to set up a system whereby transportation did not have to be integrated into the regular scheduling of the court. This proposal is obviously more likely to be cost effective in some communities than others, depending upon the number of persons held in custody pending trial, the dispersion of detention facilities and the distance from those facilities to the courthouses. Certainly, given the cost the Metropolitan Toronto Police believe they face in providing court security, the value of video should be obvious. In Hamilton, adjacent to where I live, I think there are probably some good opportunities as well, since it is some distance from jail to courthouse.

I am not a specialist in law enforcement or technology transfer. This proposal was something I learned about in the course of other research, and it therefore seems likely to me that additional thought and research could produce other improvements and cost savings in matters related to court security.

At the same time, this cost-saving proposal, while valuable, does not speak to larger philosophical and policy issues about who should be responsible for court security and to what extent it is appropriate for police departments to play the major role in providing court security. Since that is the major issue before your committee and is one that was raised by Mr. Sterling already this morning, I should point out that the pending bill contrasts sharply with the approach taken in other provinces.

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I would specifically point to the initiative in British Columbia over a decade ago, when that province developed the most wide-ranging innovations in the administration of justice in English Canada in this generation.

In 1973, the New Democratic Party government of that province set up a justice development commission under the Attorney General, chaired by a dynamic young deputy minister named David Vickers.

From the outset, Vickers enunciated as a basic axiom that police should not be involved in court security. Again, as you heard, police are crown witnesses in court proceedings and they do not appear as neutrals. A police role in court security would, he argued, compromise the appearance of the court as an independent and impartial institution.

Following this logic, the justice development commission established a professional sheriff service that provides court security as part of the Attorney General's responsibility for court services.

This concern with the appearance of impartiality in fact has been an essential part of Ontario government policy for many years. For example, we have moved away from the old police court approach when building new courthouses, so today the provincial court (criminal division) shares facilities with other courts in places such as Ottawa, St. Catharines and London rather than being an appendage to the local police station.



It is also essential, however, to recognize that this is more than a question of appearances; continual interaction between court officials and police poses the danger that courts will see themselves not as independent and impartial institutions interposed between the state and private individuals, but as part of a community law enforcement system.

Thus it is that another aspect of the potential conflict of police roles causes me real concern. While court administrators today are increasingly sensitive about the integrity of court offices and court files, it has not been too many years since it was possible quite frequently to hear reports from throughout the province of police officials having virtually free access to provincial court offices, and even searching directly through file cabinets containing court documents.

This is unprofessional conduct on the part of both police and court administrators. I fear that involving police still further in day-to-day court security would only enhance the ease with which they could gain access to court records, perhaps even in matters in which they have a direct interest.

If the government chooses to proceed with this legislation, I believe it is essential that officials continue to emphasize the distinct and separate roles and functions of courts and police in Ontario.

I hope these thoughts and ideas will add some perspective to your deliberations. I appreciate the opportunity to appear, and would be happy to answer any questions.

Mr. Chairman: Thank you very much, professor. Roughly twenty-one minutes left, so seven each. Mrs. LeBourdais first, then Mr. Runciman and Mr. Hampton.

Mrs. LeBourdais: Thank you, Mr. Chairman. I am quite intrigued, Professor Baar, to hear about video arraignment; that is something quite new to me.

I am just wondering if you can give us your thoughts on what kinds of cases would be appropriate for this new type of technology; and what kinds of cases do you think would be totally inappropriate?

Dr. Baar: I would not divide it on the basis of cases. What you are dealing with is the kinds of appearances that are involved, because when we talk about court backlog, the real problem courts face is not the absolute volume of cases, it is the number of times you have to appear in court initially: to set dates and then to be able to confirm them, to ensure that clients have legal aid and so forth. So part of what needs to be done is that you need to analyse the appearances that are made and see which ones are required and not required.

More appearances are required when an individual is in custody. It is obvious you would use the video when individuals are in custody; so the question is what appearances are required to be made and which ones would not require the physical presence of the accused?

I assume there would be some differences of opinion among defence counsel and others as to which particular kinds of appearances would require the physical presence of the accused person, but it is my contention that a great number of them would not.

I am thinking here of the weekly remands, as I mention in the statement. It is quite possible that other kinds of initial appearances or appearances to set dates could also be done in that way. I do not like, in these things, to come up with a specific set of rules. I know that in principle it is possible to do that, but any initiative like this requires consultation between crown and defence and police in order to ascertain where there is agreement; and you begin where you have areas of agreement.

What tends to happen with technology like this is that as people begin to adjust to it and understand how it operates, they accept it more broadly and use it in other ways where they can attain economies and where fairness will not be compromised. In something like this fairness would in fact be enhanced.

Mrs. LeBourdais: To some degree at this point you are suggesting it is more the appearances where some housekeeping is being done rather than the actual—

Dr. Baar: Oh yes. You would not conduct an actual trial in this way. I do not think that would be at all appropriate. You would be amazed at the high percentage of events that take place in court which someone outside the courts would consider simply to be housekeeping. There are many problems with trying to just sort those out to the point where we can eliminate unnecessary appearances, whether by video or otherwise.

Mr. Runciman: Professor, you mentioned at the outset that you felt the bill ignores the interest of the public. That was your comment. Essentially, you are concerned about the relationship of police officers with the court and the impact that may have in terms of public perception. I gather you are suggesting that it might make access to court documents that much easier for police officers who might participate in inappropriate activities. Is that what you are suggesting?

Dr. Baar: Especially in areas where you have smaller facilities, everybody in a courthouse gets to know one another, and unless you establish standards of professional conduct that are known to all parties, there is a tendency not to stand on ceremony with a friend you work with and see every day. So part of it becomes the problem, in a more informal setting of work relationships, of still establishing basic standards of what is appropriate, especially in the interaction between police and court officials.

That is what you are striving to do. To the extent that the increased involvement of police officers in court services like this increases that interaction and increases the chance for that kind of compromising behaviour, there is an increased need on the part of the Ministry of the Attorney General to ensure that court staff and police well understand their functions so that these potential abuses, which are often easier to tolerate than get rid of, do not increase. That would be my fear in something like this.

Mr. Runciman: From your observations in respect to security being provided by the sheriffs' offices in various areas of the province, do you feel we are doing an adequate job in most respects?

Dr. Baar: I have not studied this particular aspect so I would not want to make any broad conclusions about that. In terms of my general sense about court security, I have often tried to argue with judges and others that they have almost turned the court security issue upside down.

I tell a lot of my students when I have them go into courts that they are safer in a criminal court than almost anywhere else. Criminals are not innately dangerous. People accused of crimes and people convicted of them roam through the halls of a criminal court, but though these people have engaged in criminal activity they are not likely to do it in the halls of the courthouse.

In fact, the greatest threats to court security have not occurred in relation to criminal cases but in relation to other cases which arouse the emotions of the parties. A lawyer was killed by a disgruntled litigant in a family matter. Another who was killed at Osgoode Hall was engaged in the case of a dispute involving a religious group.

In Australia it has gone far beyond the problems we have had here. Within the last five years three judges have been murdered in that country, and they still have not apprehended the person who may have done this. They have all been family court judges. Those are the areas where more emotion is involved and where the possibilities are greater for these kinds of problems.

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In a sense, we have to think a little bit more about the problems of court security, about where the threats are and what we need to do in order to create an atmosphere in our courts and in our society that reduces the likelihood that will occur.

Mr. Runciman: Do you have a view on why the Attorney General is undertaking this initiative? It seems to be meeting with widespread scorn, I gather, certainly from police forces right across the province. There is very little support for this initiative. I guess we are all scratching our heads as to what is behind this. Do you have any suggestions on that?

Dr. Baar: Let me speculate from my observations of court administration here and in other provinces for 15 years.

For many years, I have been frustrated with the quality of court administration in this province. I understand that the government yesterday put this legislation before you as being something it made sense to do because court security was already conducted by local police forces and they were better qualified to do it.

I think that is probably a fairly sound conclusion. If I were an official in the ministry like Mr. Peebles or Mr. Veskimets, I would have come to my job in the last few years with a tremendous agenda of administrative needs. The administration of the courts was really a neglected backwater for many years in this province. Sheriffs and registrars were patronage appointments, and whether you knew a local member of parliament was more important than whether you had any kind of professional background or understanding.

We really have a tremendous agenda of unaccomplished reform. I have no inside knowledge of this, but I suspect what is going on is that officials looking at this must have just figured: "Look, we've got to professionalize a lot of the court services. Court security is important too, but there's got to be a tradeoff. We cannot accomplish as much as we need to accomplish in the time we have." Given the fact that the cost also works in the way that it does, it would be fairly easy to advance that argument.

Mr. Chairman: We have just run out, speaking of time.



Dr. Barr: Sorry; I did not mean to filibuster you on it.

Mr. Runciman: Yes, thank you; it was the answer I wanted and I am sorry I do not have time to pursue it further.

Mr. Hampton: I want to go on from where Mr. Runciman was. I will ask you a question that you have, in a way, already answered. I think I hear you saying that Bill 187 really does not address in a meaningful way the court security issues, that there are meaningful issues there and this bill does not address them. Is that a fair way to put it?

Dr. Baar: I did not say that, but I would have to agree with that conclusion, based on my remarks.

Mr. Hampton: I am just trying to get to a fair number of things here.

Dr. Baar: Okay, please go ahead.

Mr. Hampton: You started out by telling Mr. Runciman what you feel some of the real court security issues are, but I suspect you were only halfway through. Could you delineate, and maybe you would have to repeat yourself, what are the real issues in court security?

Dr. Baar: I think the kinds of things that I said at that time were somewhat more philosophical and speculative and I do not know if I can add enough in more general terms at this point. I think I would rather take some specific questions from you. I think it might be more valuable to go from the specific to the general.

Mr. Hampton: Certainly in his last two reports on the opening of the courts, Chief Justice Howland has said very specifically that there are quite serious problems in court security. He refers to old city hall and the problems they have encountered there. In the 1989 opening, he refers to the fact that someone brought a bomb into Osgoode Hall and they basically had to evacuate the building and negotiate with the person three times. He talks about the seizure of weapons, 417 knives and four other prohibited weapons, all at city hall. He refers to the problems at the Brampton courthouse.

The group that was here before you referred to the fact that while they have not had serious security problems yet, in view of the growth of population and the backlog in court appearances in York region, there is potential for difficulty there.

Dr. Baar: The general point I was trying to make that I think I can reiterate in the light of this is the difference between much more fundamental threats, which are to the lives of individuals as a result of disgruntled and frustrated people bringing in bombs or attempting to shoot a lawyer or a judge.

I would classify those as fundamental and important problems, and I would contrast them with those lists of specific weapons that are confiscated, because when there is pressure to develop court security you can build up the numbers by seeing how many knives you can find. I suspect those probably are not nearly as great a threat to the people in the building or to the individuals involved.

The most highly secure courtroom I have ever been in was in New Haven, Connecticut, when I spent a year doing a post-doctoral at Yale law school, the same year that the largest Black Panther trial in the history of the United States was being held. I remember attending one day at court and having to go through an elaborate security check. As I passed by the table on which all the prohibited items were placed, there were about a half a dozen Afro combs there. Those seemed to be the main potential threat to security that was confiscated.

I suspect that when you are dealing with old city hall, you are not dealing with the highest class of people, and some of them, in the course of their daily living, may carry with them things that are not carried by people like myself and my colleagues at the university. There is a concern, and I do not like to see people armed with potentially dangerous weapons, but to me that is not as serious a threat as is the real threat to somebody's life, which is so rare but when it occurs so horrible that it creates the sorts of fears that would lead judges, lawyers and other court officials to be unable to do their jobs as reflectively and effectively as they would wish.

Mr. Hampton: Let me ask you this: Do you find anything in this bill which refers to standards of security for courtrooms?

Dr. Baar: Not in my reading of the bill.

Mr. Hampton: Do you find anything dealing with guidelines for training?

Dr. Baar: Obviously not. I cannot tell you whether guidelines for training or standards are being developed or have been developed in the ministry. It is to be hoped that would be something that would be done. I would not expect that to be in the text of the bill; I would expect that to be developed by thoughtful officials in implementing the bill. I have no personal knowledge as to whether that is in progress or not. I do not want to take a cheap shot at the officials on this, but I think it is important and I cannot tell you if it is being done.

Mr. Hampton: What I basically find in the bill is a statement as to who shall be responsible, without anything more. I ask you again, does simply stating who should be responsible, without stating anything more, seem to you to address the real issues of court security?

Dr. Baar: No.

Mr. Chairman: Thank you, professor. Your comments are quite interesting. Just by way of an aside, you made the comment—and maybe you would like to clarify this before you leave—that people feel safer in a criminal court than they do in a matrimonial court. Would that be because there are more police officers in a criminal court than there are in a matrimonial court? They probably recognize every one of them.

Dr. Baar: I do not think I said they would feel safer. I would tell my students they would not have to feel the kind of physical threat in a criminal court they would necessarily feel if they met the same individuals out on the street on another occasion. I think people tend to behave themselves in those proceedings simply because of where they are and the setting in which it takes place.

Mr. Chairman: The only other observation I would make, as I do not get to say very much, is that I was at the sentencing of Patty Hearst in San Francisco. In the San Francisco courthouse they bring you in through a metal detector, they lock the door, they bring the judge down in an elevator, internally, into the courtroom and scoot him out just as fast. That is where the United States has gone.

Dr. Baar: Yes. They have become much more extreme. Yet, even though they did that, a former police officer, then a city councilman, was able to climb through a window in the city hall, avoid security and shoot and kill both a gay alderman and the mayor of San Francisco. Hopefully we will not get to the point where we ever have to consider that.

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Mr. Chairman: Thank you very much. We appreciate your coming.

The next delegation consists of the mayor of London, Tom Gosnell; Grant Hopcroft, an alderman; N. LaVerne Shipley, London Police Force chief, and Mervyn Johnson, deputy chief and zone 6 director, Ontario Association of Chiefs of Police. Welcome, gentlemen.

The last time I saw you people was on Sunday shopping, it seems to me.

Mayor Gosnell: Yes.

Mr. Chairman: That was just prior to an election, as I recall.

Mayor Gosnell: Yes, I thought that you were very familiar. Thank you for the opportunity—

Mr. Chairman: We were trying to figure out how long you would have, and I suspect you have an hour because we usually break at 12.

Clerk of the Committee: No, half an hour.

Mr. Chairman: No?

Clerk of the Committee: Oh, I am sorry, an hour.

Mr. Chairman: It is an hour. The clerk is not normally wrong. That is the first time we have caught her. You have an hour, and you can use that entire time for your presentation, if you wish. Any time left over will be equally decided among the three parties to ask question, make statements—you know, the usual.

#### CITY OF LONDON

Mayor Gosnell: Certainly it is our intent to combine the presentations to save time for the committee. I know you probably have many delegations that are going to appear before you.

To start it off, perhaps we could have Chief LaVerne Shipley give a presentation from the perspective of the police department on the effect of Bill 187 on the municipality of London.

Mr. Shipley: I appreciate the opportunity to be here today to make this oral submission on the proposed Bill 187, An Act to amend certain Acts as they relate to Police and Sheriffs.



The city of London, located halfway between Toronto and Windsor, has a population of some 290,000, with the metropolitan area population being 342,000. The London Police Force is composed of 535 persons, which includes police and civilian staff. The operating budget of the force for 1989 is \$27.8 million.

The provincial courthouse in London contains 22 courtrooms, including provincial courts, criminal division and family division, district court and Supreme Court. At present, and since 1974, the London Police Force operates a court security unit, which is composed of a police sergeant, a civilian supervisor and 11 civilian security officers. The civilians are sworn in as special constables, as provided by the Ontario Police Act. These people are responsible for the transportation and security of prisoners and are not responsible for general court security. The 1989 budget of the force to operate this unit is \$536,000.

The Attorney General has indicated that the \$3 increase in 1985 in the unconditional police household grant to municipalities that maintain a police force was specifically for court security and that the government is of the view that this grant remains an appropriate level of assistance to municipalities. Indeed, when the increased grant of \$3, from \$47 to \$50, was announced in 1985 by Dennis Timbrell, then Minister of Municipal Affairs and Housing, he stated the grant was for two areas, for court security and to assist with the financial aspect of the transfer and supervision of prisoners.

The extra \$3 grant per household provides the city of London with an additional \$351,435, therefore 117,145 households at \$3 each. As I previously mentioned, the cost of our court security unit in 1989 will be \$536,000, leaving a difference of \$184,565 to be paid by London taxpayers. This is, of course, without any additional costs to be absorbed by citizens of London to provide security for judges and security of the court building, if in fact Bill 187 becomes law.

This additional cost to London, using civilians as special constables rather than fully trained police officers, will increase the cost from \$536,000 to approximately \$1.1 million. If fully trained police officers were required, the cost would be significantly higher. I wish to point out again that this cost would have to be absorbed by London taxpayers.

Another concern I have is that if Bill 187 becomes law a conflict could develop between court officials and the local board of commissioners of police and/or the police chief. As I understand Bill 187, it would be the responsibility of the board of commissioners of police and the police chief to determine security needs and levels. If in fact the level of security provided by the police is deemed not sufficient by the presiding judge or other court officials, this may lead to an adversarial situation which would not be in the best interest of the administration of justice.

Recently in the city of London, one of the provincial court judges closed his court because a civilian security officer was not in the courtroom. He was not present owing to the fact that there were no prisoners in that particular courtroom to require the presence of a security officer and his presence was needed in another courtroom where prisoners were appearing before the court. This situation was reported in the local media and, in my opinion, does not further public confidence in the system for administration of justice within the province.

I believe Bill 187 is unreasonable and unfair and discriminates in that it places increased costs on those municipalities that have courtroom facilities within their boundaries. It should be pointed out that all municipalities that provide their own policing receive the extra \$3 grant regardless of whether or not they are required to provide court security. If Bill 187 became law, it would require that the citizens of London pay for court security for other municipalities in the county of Middlesex.

Further, why should the citizens of a particular community or municipality have to bear the financial impact of court security in a provincial court building when the responsibility for the administration of justice in this province is that of the Ministry of the Attorney General? It is my belief that this cost should be borne by the ministry, and in this manner the cost would be shared by all citizens of Ontario.

Finally, I have concerns over public perception if Bill 187 becomes law. It is my understanding that in the past the Ministry of the Attorney General has expressed concern over the perception of the general public when police and courts work closely together. Indeed, some years ago London provided police officers as public prosecutors in traffic courts in London. This practice was stopped by the Attorney General's ministry, which provided and paid for provincial prosecutors. This was to prevent the perception of the public that police are part of the court system.

Bill 187 would of course put more members of the police force, uniformed police or civilian security, in the courts in roles other than as witnesses. I suggest that it is important to remember the old adage that justice must not only be done; it must appear to be done.

I wish to thank this committee for the opportunity to speak on this important issue.

Mayor Gosnell: I think the chief has covered a few concerns that we have from the police or the security point of view. Politically, I think it can be said that our council is very strongly supportive of position of the Association of Municipalities of Ontario in feeling that the bill is discriminatory and unfair to those municipalities that have courthouses and court systems within their jurisdictions. Really, it is creating another level of responsibility for municipal governments without the accompanying finances to pay for that responsibility.

Even with the \$3 per household grant, which was transferred, I believe, in 1985 by the then minister, Dennis Timbrell, the city of London is finding that this is \$185,000 short of its requirements for providing security for transferring prisoners in the jurisdiction. To go to this system of having police officers providing the court security in our Middlesex county court system would be an additional \$1.2 million, costing the taxpayers of London an additional \$1.4 million. We certainly feel that is not very fair and is discriminatory.

To us the issue is not court security alone. It is a very important issue. The gentleman who made his presentation just before us, Dr. Baar, certainly addressed that. There should be consideration for court security. We are not in a position to determine or define, and neither does this bill direct what steps should be implemented, what standards should be followed. Those are things that quite properly belong under the administration and control of the Attorney General's office or the Chief Justice of the province.

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We do not believe the imposition of the security system is a reasonable responsibility to be undertaken by municipal governments. We believe the taxation as received by Ontario through sales tax and provincial income tax should properly go towards providing a court security program through all the counties of Ontario fairly and adequately, and at standards we understand. The bottom line on doing otherwise is to discriminate and to show a sense of unfairness against those municipalities that are providing within their jurisdiction services that are very important to the administration of justice in this province.

Alderman Hopcroft is on our council. He is also the vice-president of the Association of Municipalities of Ontario and perhaps he would like to add a few words to that.

Alderman Hopcroft: Thank you very much. I, too, would like to thank the committee for the opportunity to appear today. To elaborate on what the mayor indicated, the city of London does support the brief which was presented yesterday on behalf of AMO and the Municipal Police Authorities; in particular, to highlight some extracts from that report, we draw attention to that segment where the Ontario Law Reform Commission was quoted as saying that public confidence in the courts would be increased by reducing the apprehension that the courts are dominated by the police, an apprehension engendered at least in part by the intergral role which appears to be played by the police in the functioning of the courts. That is really a vital issue, whether the police should be seen as playing a greater role in security in the court system.

The second issue is the issue of responsibility. Again, looking at the brief presented yesterday, the Zuber inquiry was quoted as recommending that the provision of court security should be the responsibility of a provincial police force operating under direction of the courts administration division of the Ministry of the Attorney General.

To follow up on that, I think it is very important there be some consistency in security provisions across the province. As well—I am speaking now as a lawyer, because I do try to practise law once in a while when I am not appearing on municipal business—it is very important that the court and the police be seen as being at arm's length. It is important that there not be a potential for conflict between the police who are appearing before those judges as witnesses and the judges who may feel that they are entitled to greater security than is already in place. Our chief alluded to that by the fact that one of our courts was closed in London because of a disagreement over the level of security that was being provided.

I do not believe it was mentioned, but there was a letter which was signed by the chairman of our police commission. Could I clarify whether members of the committee have that letter? It elaborates on the costs that are currently being incurred and the fact that the \$3 grant which was instituted in 1985 falls far short of the costs just of transporting prisoners that the city of London is presently facing.

Again, I would like to thank members of the committee and we would be pleased to answer any questions.

The Acting Chairman (Mr. McGuinty): Thank you. Does anyone else from your delegation wish to make a statement?



Mr. M. Johnson: If I may. I represent, aside from being the deputy chief of London, zone 6 of the Ontario Association of Chiefs of Police. I realize that a presentation has already been made to you. I would just like to briefly reiterate the concern of the municipalities in the southwestern area of the province, west of London and north to Goderich. Within that area are Chatham, Goderich, Leamington, London, Sarnia, St. Thomas, and Windsor, all of which have similar problems.

When the bill was introduced, the speech made to the Legislature indicated that judges in the province concurred with the government's decision that security of the users of the courthouse would be best ensured by using trained police officers. I can tell you that created a reaction concerning such utilization of police officers, aside from the cost.

I understand that it has been tempered somewhat with a suggestion that trained special constables could be used in their place, which admittedly lowers the cost somewhat. I think you would find that special constables utilized for that purpose would closely equate to the salaries of correctional officers in this province. The saving is not as great as one might imagine.

I understand all of these cities and towns would have the responsibility of protecting the courts, both civil and criminal, within their jurisdiction. It has already been stated here that they would have to assume the costs of providing this service for the other municipalities that do not have courtrooms. It has been expressed to me that all of the towns and cities that I have mentioned would be hard-pressed financially to provide that service, furnishing the required manpower.

I am concerned also, as the director for that region, about the consistency of the service that would be provided if in fact special constables were used: for example, who would be responsible for the training and whether or not the cost of that type of service is justified depending on the need in the type of court where the officers were to be deployed.

I think I would certainly echo all of the other points that have been raised. I thank you for the opportunity of addressing you.

The Acting Chairman: We had 45 minutes, which leaves 15 minutes for questioning.

Mr. Faubert: You indicate these to be just straight pass-through costs. There is no indication in your brief, as there has been in the past, that perhaps what you would face would be a devolution of costs like this, it is a matter of reducing services that you now have officers performing and that you are required to fund within your city. Would you care to address that particular issue?

Mayor Gosnell: Perhaps the chief can follow up on what I am going to say. We are adding 35 police officers in London over the next year, because we have probably one of the lowest ratios of police to civilian population anywhere in the province for a city of over 50,000 or 100,000. It is not a question of moving officers from one area that might be more or less idle at times; our police officers are very busy. I am sure most municipal forces have police officers stretched to the maximum.

We are looking at significantly increasing the number of police officers in the future anyway. London, as you know, is going through quite a growth period.

It would not be a flow-through cost. It would be directly added to the mill rate of the taxpayers in London. We are looking at a minimum of a 1.5 per cent increase that this government would be imposing on us to undertake security at our courts. We have our municipal forces stretched to their maximum now. Perhaps, chief, you might want to talk about disposition of your men.

Mr. Shipley: Certainly, as his worship mentioned, we have a very low ratio of police officers, even with the additional 35. Our ratio is one officer for every 800 citizens. Many municipalities are running one officer for 500 to 600. Even with the additional 35, we do not have extra police officers.

If it were police officers that we had to put in the courtroom—and I realize the bill does not say it has to be police officers—then I would have to cut some of my other areas of patrol: either some of the school projects, the values, influences and peers program which is in the schools; or possibly our Reduce Impaired Driving Everywhere program, which we put a lot of effort into, or some other area. If in fact we put in civilians, then of course it is a matter of the money, which is always a concern to council and to my board of commissioners of police. If I have to come up with another \$1 million in my budget, which off the top of my head I would estimate represents a five per cent hike in my budget, that is quite an impact. That is what we would need if in fact we put in civilian people instead of police officers under this bill.

That, as I say, is looking at not putting too many people in there and saying I can get by with another 12 people; and I would point out that the 12 I have in there now are not there for general court security, they are tied up all the time in transporting prisoners from the courtrooms back to the cells in the court building and then on to another court. That is their main function; and also, of course, in the morning, transporting the prisoners from the Elgin-Middlesex detention centre to the courts, and through the day as they are disposed of taking them back to the Elgin-Middlesex detention centre.

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Mr. Faubert: One other question that I have on this relates to how you are actually doing it now. You have 11 or 12; I am not sure of the actual number—11, I guess; or 13 including the civilian supervisor and the police sergeant in court security. Are they separately uniformed civilian staff? In other words, are they not in a police uniform?

Mr. Shipley: No, they are not. They call them "green jackets." They wear green sport jackets, grey trousers, black shoes and a green tie—I think it is a green tie, they are certainly visible.

Mr. Chairman: Is that anything like yellow jackets?

Mr. Shipley: They are referred to as green jackets. They have a big crest on the pocket which indicates they are court security.

Mr. Polsinelli: Properly funded, would your force be able to provide better security than is presently being provided by the Attorney General's office, or at least the same level?

Mr. Shipley: Yes; depending, I guess, on what would be required. In other words, are we talking about police officers or are we talking—

Mr. Polsinelli: We are talking about what you would deem to be required. Your force would determine the standards, the level of training, the number of officers and the number of civilian employees. Your force, as trained professionals, would determine what is required. Are you as competent, if not more competent, than the bureaucrats in the Attorney General's office to do that?

Mr. Shipley: Yes, I would have to agree that living in the municipality and realizing the type of people who are going to the courts, certainly I, as a police chief and with help from my senior officers, could come up with a proper type of security for the courts.

Mr. Polsinelli: That is what Bill 187 says. It says that you are the most competent individual to determine the level of security, the type of training and the types of officials that you should have in your courts. If we are talking about money and the funding of the courts, of providing the court security, then it is ultimately the taxpayer who pays anyway. No matter which pocket it comes out of, either the right or the left, it is his money.

Mr. Shipley: Yes, I appreciate what you are saying. But my concern is this: should that cost not be shared by all citizens of Ontario?

Mr. Polsinelli: I agree with you.

Mrs. Cunningham: Mr. Chairman, I have only been here a couple of times since I was elected. Bill 113, Bill 114 and now Bill 187; you must feel so unpopular.

Mr. Chairman: Word has been out about that, I think. Word has gone forth.

Mrs. Cunningham: It is so sad. One of the greatest chairmen of all times gets stuck with this rotten legislation.

Given the line of questions, I have just one concern. I would think the province of Ontario could maybe foot all the bills if it does not matter where the money comes from. It is too simplistic. Then all of us and those in local government could get elected every year because we kept a very low tax base. Sooner or later one has to decide who is going to pay what. I think that is what this bill is all about, the fact that all of a sudden we are thrusting more responsibility to the municipalities with no money to go with it. That is what Bill 187 seems to me to be.

But I will ask the group from London what is good for them. Would Bill 187 improve the quality of service in London?

Mr. Shipley: When you say quality of service, are you talking about in the courts?

Mrs. Cunningham: Yes, when we have bills in parliament hopefully we are changing legislation so that things will be better. I mean, we want to make things better; what is the point of having legislation if you go back to square one?

Assuming this government thinks things will be better because of this particular piece of legislation, I just wondered if you could respond to that.



Mayor Gosnell: It ties in to a question Mr. Polsinelli posed. Who could really best decide what the security should be for the London-Middlesex county building, the court building?

I think the problem would be that if we were to take over the authority of providing security, to whom then are the judges to complain or for whom do they work? They do not work for the city of London; they do not work for the London police department. As the chief has pointed out, if there is a dispute about the level of security or the administration of a civilian force which is in the building, who would they appeal to? The Attorney General, the mayor's office, the police commission? That really would be the problem.

I suspect our first response would be that the Attorney General and the province should be responsible for providing security in the court buildings in the province and, as always, the cities would be prepared to consult and co-operate and work with the provincial police departments, the office of the Attorney General or the office of the Solicitor General at any time. But there has to be one governing authority, otherwise no one will ever understand who he is working for and who is ultimately responsible for the security of that building.

Mrs. Cunningham: Therefore, in response to my question, in some way even the basic question of whose responsibility this is has not really been answered at all.

Mayor Gosnell: No.

Mrs. Cunningham: I think that is a tremendous problem in the legislation itself. Following the former question, because I think it was a good point you were making about training and what not—obviously you had some consensus here as well—if the responsibility is the province's, and it seems to me your brief is saying that is what it should be in that it is the whole premise of this particular ministry, then have you had any direction in the way of guidelines around levels of service or who provides the service, what types of people; or have you had any assistance at all with regard to the training people have been talking about? Has the province given you any help or indication of assistance around levels of service or training?

Mr. Shipley: If I may digress a minute, in about 1972 a new courthouse was built in London. That provided many courtrooms, as I have mentioned there were 22. Up to that time we had been operating in the police building. There were two courts in the police building at that time, provincial and city courts. We had three officers assigned to court security, taking prisoners up to the courts and so on. That cost us something like \$50,000 a year at that time.

When the new court building was built, the Attorney General wanted us to provide court security in that building. That would have taken about 10 officers. The board of commissioners of police said it would not do it. There was considerable discussion between the Ministry of the Attorney General and the board, with the result that the ministry agreed that provided we put civilians, special constables, in the courts, they would pick up the cost of everything above the \$50,000 we were already committed to.

There was never a written agreement on that, but that went on until 1985. Before the end of the fiscal year for the government, we billed the government for all our costs above \$50,000, and in a couple of weeks we would get a cheque back.

The last year we broke even on that was in 1985, when the grant was increased by \$3, from \$47 to \$50. We broke even that year. Since then, of course, we have been providing the total cost, which as I mentioned for 1989 is \$536,000.

It gives you a little background. We did all the training for those court security people. They were in class for two weeks. They were taught use of force, powers of arrest, how to handle prisoners and all that type of thing. They were outfitted in this uniform. As I mentioned, they wear a crest which says "court security." That is the way the system has operated since 1973, I believe it was, when the new court building was completed. The funding from the ministry stopped in 1985 with the increase of the \$3.

Mr. Polsinelli: Chief, on the question of training, level of security and the like, aside from the question of cost, there is a point on which I would like clarification. Do you feel the bureaucrats in the Ministry of the Attorney General could provide you with a better direction than you and your people could establish?

Mr. Shipley: No.

Mr. Polsinelli: So in terms of the level of security and the type of training and actually providing the court security, you are in agreement with us that you and your people are the best people to provide it; aside, again, from the question of cost?

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Mr. Shipley: Certainly—

Mr. Gosnell: If I may jump in on that: the problem is still going to be what happens if the judges in London feel that it should be a police officer from the London department rather than a civilian? Who is going to solve that problem?

Mr. Polsinelli: I understand their concern, but we have to realize that judges are not police officers. They are not trained professionals in security services, whereas the chief of police standing to your left is an expert in the field. If we, as a Legislature and as a government, have to give the responsibility of providing security services to some individual or some body, do we give it to bureaucrats in the Attorney General's office, do we give it to judges who are trained in the law but not in security services or do we give it to the chief of police? That is the question.

Mr. Gosnell: Sure, but I would hope we do not end up in a situation where we take trained men and women, make them police officers and then put them in courtrooms. That is the problem. There should not be trained police officers doing that. We need them on the streets stopping crime. That would then remove the chief from supervision.

Mr. Polsinelli: What the bill does is say your chief of police is responsible for providing the security service and determining the level of service and the level of training; whether they are uniformed officers, civilian employees or whether a guard is required at all. We are recognizing him as the expert in the field and as the professional, and we are saying that recognizing those professional qualifications you are the one who is best qualified to determine what type of security is required.

Again, I say that is outside the question of cost and that is a completely separate discussion.

Mr. Chairman: All right; we are going to turn to the third party. Mrs. Cunningham, Mr. Runciman wanted to share some time with you.

Mr. Sterling: Could I just say on this point, because I think Mr. Polsinelli has used up some of our caucus time in terms of dealing—

Mr. Chairman: No, he has not. I am not taking it out of your caucus time.

Mr. Sterling: Notwithstanding that, the conundrum now is that if there is a dispute between the police and a judge or the clerk of the court who may want a certain level of security, as I understand it—at least in terms of representatives of York region whom we heard from earlier—the sheriff acted as the, quote, "power broker," trying to negotiate between the police and the justice system as to what level of security is needed. Is that the way it works in London?

Mr. Shipley: Not really; not in the provincial courts.

Mr. Sterling: No, I do not mean in the provincial, I am talking about the district court and the Supreme Court.

Mr. Shipley: What has happened in London in the past in terms of the district court and the Supreme Court—because we do not have the court people in those courts—if in fact a particular judge was dealing with a case where there were a couple of armed robbers or some crime that could cause concern, the sherrif called our superintendent of uniformed division and hired off-duty police officers. That is the way that was handled. It was strictly up to the sheriff and the judges to determine how many they wanted and if in fact they wanted them. That is the way that has been handled in the past.

Mr. Sterling: I think, in terms of your answer, the difference is that there is a philosophical argument which every other province has bought—save and except Ontario—that the Attorney General should be responsible for security and should be the boss of security in courthouses. There is an inherent conflict of interest that the police are there to prosecute people. That is their primary role in the courthouse; it is not to keep the peace, as such, in the courthouse.

Mr. Polsinelli: As a lawyer you should know that prosecution is not done by the police but by the crown attorneys.

Mr. Sterling: The problem that has been pointed out is a philosophical one. When asked who can best advise on protection within the courthouse, you answered correctly that the police are the best advisers in terms of security. They know the security business, etc. But as to whom those individuals who are securing the courthouse should be responsible to, I would say it should not be the police chief of London, it should be some other individual who has a duty to the justice system as a whole.

Mr. Shipley: I agree with that. Certainly that is the philosophy of this force, the London police force. We into that problem, as I mentioned, in the case where the judge closed his court. That got a lot of publicity through the local media. I am sure that the judge believed our people were there to



provide him with some type of security; and that in fact is not the role of the people in there now, it is strictly prisoner security. I think that is the difference in what we are doing now and this proposed Bill 187.

Mr. Sterling: Do you still have your victim assistance program?

Mr. Shipley: Yes, we do.

Mr. Sterling: I think the members of the committee should know that the London Police Force is probably one of the most progressive police forces in all of Ontario in terms of dealing with victims.

Mr. Chairman: What is your riding?

Mrs. Cunningham: And the most efficient. They like things the way they are in London.

Mr. Chairman: I was just checking whether Mr. Sterling had moved his riding.

Mr. Sterling: If any members of the justice committee want to see a police force that actually assists victims, particularly with regard to domestic violence, etc., this is the force to go and see. They have established a model system.

Mr. Runciman: Just one quick question to the chief, and perhaps the mayor as well: if Bill 187 goes through, and you have indicated it is going to cost you something like \$600,000 more initially, something like that— .

Mayor Gosnell: If it goes through and we are required to put our police officers in, it is about \$1.2 million more.

Mr. Runciman: That is \$1.2 million additional money. How are you going to deal with that? How is it going to impact the services the police provide? Are you going to have to increase your taxes? How are you going to deal with it?

Mr. Shipley: You are talking of the police going into the courts, are you?

Mr. Runciman: I am interested in the effect on the municipality as well.

Mayor Gosnell: You mean the difference of the \$1.2 million?

Mr. Runciman: Yes.

Mayor Gosnell: I am sure that the chief would give us a very difficult time trying to slash his budget, because I think it is right down to the minimum he can slash it now. I think the consequence would be putting it on the mill rate of the city, and as I said that would be about a 1.5 per cent increase in taxation to the public in London. We think that is very onerous and very unfair.

Mr. Shipley: If I may, I would have some difficulty going to my board recommending an increase like that based on one operation. It may be that I would have to cut some of the police services that I have now to find the money to do that.

Certainly you cannot cut patrol, it is necessary and has to be there, but there are other areas, and I mentioned them: our VIP program, values, influences and peers, which is taught to grade 6 students in London; and our HARP program, high school accident reduction program, taught to grade 11 students in the city of London. The latter program, harp, is based on students not drinking and driving and it is an excellent program. Some of those programs may have to go.

I would find it very difficult to pull officers out of the schools, because we believe strongly that to beat the impaired driving problem you have to keep working at it and you have to get at the young people; you have to instill as a way to live that you do not drink and drive. That is why we feel our HARP program is so very important, as is our VIP program; but some of those programs may have to go.

Mr. Hampton: I want to go over a couple of things that were mentioned.

A number of the groups that have appeared before us mentioned that their police forces are currently expanding the police role in the community in such areas as the Reduce Impaired Driving Everywhere program, the programs in the schools, crisis intervention, special drug squads and generally broadening the community policing role. Is that true in London as well?

Mr. Shipley: Yes, it is. As part of that, about a year and a half ago we started a street-level drug enforcement unit. We work with the Royal Canadian Mounted Police on that. That is a new program. The HARP program has been in place two years now. The family crisis program, which was alluded to earlier on, has been in place for several years.

Indeed, the philosophy of the Ministry of the Solicitor General is more community-based policing, and we do not disagree with that.

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Mr. Hampton: I would assume you take all of these things very seriously and you want to devote your attention to those things. The Chief Justice of Ontario, in his last two reports to the officers of the courts, has said that courtroom security is an important problem. He referred, in the 1988 report, to incidents at old city hall and in Brampton, and in the 1989 report he refers to weapons seized and to bombs in Osgoode Hall and so on and so forth. He has called, on both occasions, for serious treatment of the court security program.

I appreciate that your responsibility as a police officer means that you would have some knowledge of this, but what I see Bill 187 doing is asking you to divert some of your attention from the important policing needs of your community to take under your bailiwick the important problem of court security. Is that how you see it?

Mr. Shipley: I am just looking at it from the perspective of London. I do not see a problem in terms of court security. We have not had any incidents. That is maybe not a good way to look at it, for we could have one

today or tomorrow, obviously, but we have not had those types of problems. In fact, except for a couple in this city, which is a very large metropolitan area as we are aware, I do not think there has been a major problem or any problem of any significance in the courts in this province. I guess I am a bit concerned that because of some problems in this municipality it might be taken as, "Well, if it is happening here then it is a problem across the province." I do not see it, certainly in London, as a problem.

Mr. Chairman: Do you want to rephrase that question?

Mr. Hampton: No, but I would appreciate it if the chair would not interrupt all the time.

Mr. Runciman: Just being helpful.

Mr. Chairman: Touché.

Mr. Hampton: I think you missed my point. Your job, as I understand it, is to look after the policing needs of your community. As I understand it, from what you have said in your brief, that eats up a pretty big chunk of your budget.

Mr. Shipley: Oh yes; total policing needs, yes.

Mr. Hampton: What the government is saying is it also wants you to be responsible for something else. You may not think it is a problem in your community, but the Chief Justice of Ontario has said, on a number of occasions, and Mr. Justice Zuber has said in his report, that it is an important problem. I see that as putting you perhaps in a conflict situation. You are going to have your community saying to you, "We want police doing these things;" but then you may have the Chief Justice of Ontario or the local justices in London saying, "No, no; we want the resources in the courtrooms." What do you do then?

Mr. Shipley: That is my problem. We have had that situation.

Mr. Hampton: I want to ask you, do you run a security service or do you run a police force?

Mr. Shipley: I run a police force.

Mr. Hampton: Okay. I hear the government saying it wants you to run a security service and the police force.

Mr. Shipley: That is right.

Mr. Hampton: I say that creates a conflict for you in a financial sense.

Mr. Shipley: It does.

Mr. Hampton: I think it also creates a conflict in a deeper sense: in the sense of establishing the proper role of the police vis-à-vis the court system. Do you agree with me?

Mr. Shipley: I do, yes.

Mr. Hampton: Okay.



Mr. Hopcroft: Before you move on, if I could add a comment here as well.

In fact to date there have already been conflicts between the chief district court judge in London and the Ministry of the Attorney General over the provision of court security. I think Judge Killeen has been quite vocal that he feels more security should be provided. There has been ongoing disagreement over the administration of the security service in the court building. To reiterate what I said earlier, it gives rise to a conflict between the police force, whose members appear daily as witnesses before the courts, and the people who are dispensing justice in our community. That is a very unenviable position for anyone to be in.

Mr. Hampton: I do not think I have any further questions. I appreciate that you have probably been called upon to do a job, and likely because you take your task seriously you have done a good job. But I wonder if police forces, as an ordinary course of their business, really should be in courtrooms at all. That is what it boils down to for me. I think you have an important job to do out there in the community on the streets. I do not see you as running a security guard operation. I guess that is what it boils down to for me. I hope you agree with me on that.

Mr. Shipley: I do. Thank you.

Mr. Farnan: Okay, Mr. Chairman, if I could continue?

Mr. Chairman: Go ahead.

Mr. Farnan: I just have one very brief question. I do not know how long you have been here this morning, but a pattern emerges among delegations coming forward with concerns. I suspect the role of a committee is to listen and to evaluate those concerns. My fear, from the evidence to date, is that the government members of this committee do not appear to be listening.

Mr. Faubert: Is that a question?

Mr. Farnan: It will certainly be a question. What I hear the government members doing is trying to impress upon each delegation what a marvellous piece of legislation this is. That reminds me of a process we went through with Sunday shopping.

Did you get the impression this morning during the course of the proceedings that you had a committee that was listening to your concerns and that may in fact reflect your concerns in what we do with this legislation?

Mayor Gosnell: I think that is a very difficult question. Let me maybe put it this way—and I am speaking personally and I think for my council and for other municipalities: We have had the feeling for a while that this government is simply not interested in talking to the cities or the jurisdictions in this province about issues that affect us both. That is sad because we think we have some solutions to problems. We are prepared to work with the government.

This bill does not really address the whole question of court security, and that really is the issue. All it does, really, is throw money at the taxpayers municipally and say, "Now you go out and spend the money and run a system." It is very weak legislation that is very difficult to understand. It is very unfair and it is discriminatory.

It is almost as if begrudgingly we are asked to come and speak before these committees. That is a real shame, because we have a lot of opinions, and some ideas and some knowledge that might assist the government in preparing its legislation. This government, however, simply does not appear to be interested in hearing from the cities in this province, and this is not the first time. When that happens, the whole system of government in Ontario suffers.

Mr. Farnan: If I could go on with an analogy for just a moment: We have been through a system where the Association of Municipalities of Ontario and the municipalities generally have said in terms of Sunday shopping, "Look; we do not want that particular responsibility," or "We do not want that legislation." Yet despite the process we went through, it became a fait accompli.

It frightens me almost that in this particular legislation there is a sense of a municipal option vis-à-vis security; that you can say, "Okay, we will pass it on to the municipalities; if you want security and you are prepared to pay for it through your local tax base, you can have it. If you do not want security, then you could save a few dollars on your tax base." The frightening thing about that is, when you compare that kind of attitude with the reports that have been coming down from the Chief Justice, etc., there is no correlation.

Is there this sense among the municipalities that this is another case of the government washing its hands of a provincial responsibility and passing on something unasked to the municipalities?

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Mayor Gosnell: I think we have a sense that is what is about to happen. However, I do not want to prejudge this committee. I would hope you have listened to this delegation and that you will listen to others. Perhaps, in your wisdom, you can point out to the Attorney General that his legislation does not make any sense.

It is not a question of municipal option on security. We are not going to say, and I doubt we would be allowed to say, "No, we're not going to provide security at the courthouse in London." We will be told by a provincial body that we have to provide security, "And by the way you have to pay for it." That is the flaw in the process.

If there is a problem with court security, that should be addressed first. I do not think we have really seen that. Arising from that there should be a program of fairness, so the taxpayers in the province know they are paying their fair share wherever they live to make sure the justice system is being run properly, and that includes court security.

Mr. Chairman: Mr. Hampton, you have a minute and a half.

Mr. Hampton: There was a document drawn up by the government. A committee reported following a study of this question. It is my understanding from having glanced at the report, even though I am not supposed to have the report—it is called the Anderson report—that it deals with some of the nuts and bolts of court security. Have you had a look at this report at all?

Mayor Gosnell: We have heard of it. We have never been given an opportunity to see it.

Mr. Hampton: As it concerns what is before this committee, has the Ministry of the Attorney General ever said to you, "Well, this is basically what the report says; these are the options it discusses and this is what it advises"?

Mayor Gosnell: To our knowledge, no. We have not been privy to any of the conclusions of the report, although we have heard there is a report and we do believe it should be made public.

Mr. Chairman: Thank you very much, mayor and gentlemen, for coming before us from the beautiful city of London. We wish you a safe trip back.

I have before me, committee members—I believe it has been placed before the chair—a motion by Mr. Hampton.

Mr. Hampton moves that the justice committee ask the Ministry of the Attorney General to make copies of the Anderson report available immediately to all individuals and organizations appearing before the committee on the subject of Bill 187.

I have had an opportunity to consider the relevant sections of the Legislative Assembly Act and the standing orders in terms of whether this motion is in order.

Subsection 35(1) of the Legislative Assembly Act reads as follows:

"The assembly may at all times command and compel the attendance before the assembly or a committee thereof of such persons, and the production of such papers and things, as the assembly or committee considers necessary for any of its proceedings or deliberations."

Subsection 35(2) carries a further power, but I do not intend to make any decision on that, because I would have some concerns about the Freedom of Information and Protection of Privacy Act as to whether we could do that.

But 91, which in my view is the standing order that would also apply, says:

"(a) Standing and select committees shall be severally empowered to examine, enquire into and report from time to time on all such matters as may be referred to them by the House.

"(b) Except when the House otherwise orders, each committee shall have power to send for persons, papers and things."

On the basis of those two principles, I rule that the motion of Mr. Hampton is in order.

Mr. Faubert: Can we have a question on the motion that is before us, to you as the chair?

Mr. Chairman: Yes, there can be debate on the motion. However, I think the first thing I had to do was to rule whether it was in order or not in order, and I have done that. If it is debate on the motion, you are open.



Mr. Faubert: Yes, I have a question of you. Implied within this, can members of the committee have the report also? It does not say it.

Mr. Chairman: That is quite correct.

Mr. Hampton: If you are concerned about whether the committee will get it, I think it is pretty clear from some of the submissions we have heard that those groups and organizations of individuals, if they have it, would like to refer to it and make it available to us.

Mr. Farnan: I would move an amendment that committee members receive the report in addition to those stated in the motion.

Mr. Chairman: So then it would read, "to make copies of the Anderson report available immediately to all members of the committee and all individuals and organizations appearing before the committee on the subject of Bill 187."

I think the motion itself is pretty straightforward and clear. I do not know whether you want any discussion on it or not or whether you are ready to deal with the matter in terms of voting on it.

Mr. Sterling: The only thing that I—

Mr. Chairman: The first hand I saw was that of Mr. McGuinty, and then I will recognize you.

Mr. McGuinty: This is perhaps not on the motion itself, but I would ask a comment from the chair with regard to the propriety of committee members having in their possession a confidential document which I can only assume is obtained surreptitiously, and in using that document as a point of reference for groups that have appeared before this committee.

I do not know on what basis that would be challenged, but it seems to me there must be something in the rules of procedure which would preclude that kind of thing.

Mr. Chairman: I am sorry, I think what you are doing is challenging the decision I have already made and there is a procedure for that. I can tell you that did give me some concern, whether or not the Freedom of Information and Protection of Privacy Act should override the Legislative Assembly Act and the rules, but I think that is perhaps the answer that is made if the motion is put.

But again, I think you are commenting on my decision, and under the rules you can only do that if you vote to appeal it.

Mr. Sterling: The problem here is that we are more than halfway through public hearings and producing a report at this stage of the game, the Anderson report, may only—first of all, the Attorney General has been asked to produce it and he has refused to produce it by claiming the privilege of exemption under the freedom of information act, notwithstanding that the freedom of information act permits the Attorney General to release this document if he so chooses.

The only point that I make is that it is kind of ridiculous that this motion is necessary. The document, in essence, has become a public document. The only concern that I have—and I still control to some degree the distribution of that document—is that if there is any security risk to any courthouse or if there are any security risks to the justice system, I would like to know about it. I cannot find it in the particular document at this time.

Therefore, I have a concern in terms of sharing this document with other individuals. I believe it is important that it be shared. I do not find the document dangerous other than being an embarrassment to the government in that they have only sort of taken cognizance of the part good for them and not swallowed the bad part in terms of bringing Bill 187 forward.

I do not know whether Mr. Hampton would like to deal with this when we come to clause-by-clause consideration of this bill. I think that would probably be a more appropriate time, because if we release the report now I am not certain that any group is going to get hold of it before coming before this committee. I would rather have it clearly understood that all groups that came before this committee really did not have the benefit of that report.

Mr. Chairman: Mr. Sterling, you made a comment that the Attorney General can release it. Do you know what section of the freedom of information act that is?

1210

Mr. Offer: The Attorney General, like any minister, has the right or the discretion to release anything that is not under the freedom of information act. I think the Freedom of Information and Protection of Privacy Act and sections thereto allow the particular head or the minister to deem any particular document or advice as confidential under the freedom of information act.

Mr. Sterling: Under a request through the freedom of information act; however, this committee is not making its request, nor is Mr. Hampton making his request, under the freedom of information act. Therefore, the Attorney General cannot rely on the secrecy which is permitted under the freedom of information act as his defence.

Mr. Chairman: I perhaps should have kept my mouth shut, because we are really getting into the merits of it; but you made a statement that he could do it and I cannot see that in the act. In any event, is there any further discussion on the motion of Mr. Hampton?

Mr. Faubert: I want to put it on the record that, first of all, I find that to discuss the issue that is before us without all the documentation puts us in a very awkward spot. Mr. Sterling makes the case that it is almost a public document now. We know it is accessible and has been in the hands of some members of the committee, but not all members of the committee.

I think on that basis it puts us in the position of having to debate something which we do not know or do not have the content of. We do not know whether it has been accurately quoted to us or not. We are put in a position of not knowing whether it is being quoted in context or out of context. Some

parts of it have been quoted to us, which does not give us the full context of the document to assess what recommendations are being put forward. It puts this committee in an awkward spot; it certainly puts this side of the committee in an awkward spot.

Mr. Chairman: All the committee is asking is that the Attorney General be asked for that.

Mr. Faubert: That is right. On that basis, I find great difficulty in voting against that particular request. I think that we, as committee members, have a right to that information. How can we say in the end that we have made an informed decision when we have not had all the information in front of us?

Mr. Hampton: I want to say that I think all the groups that have come before us have said that in their minds we are dealing with a very serious issue. It has financial implications. It has implications for the use and distribution of police forces. It has implications, as the Chief Justice of Ontario has said on a couple of occasions, for the safety and the lives of people who are in our courtrooms and who work there. It has implications for how our courts are perceived and how the police forces are perceived in the context of the administration of justice in our courthouses.

Yet we find that a document which deals with the nuts and bolts, the bare bones of the questions we are wrestling with, has been denied, not only to this committee but to those legitimate groups and organizations, elected bodies that every day confer with the province to administer justice and administer, manage and co-ordinate our police forces; they also have been denied this document.

It seems to me that for the Ministry of the Attorney General to expect us as a committee to deliberate in good faith on this issue without providing us with this document and without allowing it to the groups and organizations that come here in good faith to talk about this issue really strikes at the integrity of what we are doing here and strikes at the integrity of this whole issue.

I asked yesterday, personally, for the report to be disclosed. I think this is another thing. This committee, speaking as a committee wrestling with a very difficult question, is asking for this report to be made available. I really wonder how we, as a committee, can continue if a document which deals with the nuts and bolts of the problems we are wrestling with is being denied, not only to the committee but to the groups and organizations that come here in good faith and want to deal with the issue as well.

I really think it is incumbent upon this committee to ask for that report to be turned over so that we really know what the issues are, what the equations are and where we are going on this.

Mr. Polsinelli: Should we also ask for a copy of cabinet submissions?

Mr. Hampton: No, I think we can deal with that question later. I think that is a separate issue. If you want to argue that, we will go at it. Maybe after we see the Anderson report we may want to do that.

Mr. Chairman: Is there any further discussion on the item?



Mr. Offer: I think what we are talking about through this motion is a motion which addresses a very important principle.

Yesterday I indicated in connection with a request to provide that report that the minister had made a determination that this Anderson report was confidential. That is a determination which is clearly within the discretion of any minister of the crown.

I believe that what we are dealing with here and what we are discussing is an extremely important principle. That principle is whether a minister can receive information, advice, on a confidential basis, and also whether a person providing such information and advice can provide that on a confidential basis.

I do not think this particular motion, in its importance and principle, deals and should deal with the substance of the report. There are many reports, there are many pieces of advice which are given to many ministers which can be accepted, rejected or altered or modified. That is not what this motion is about. That is not what this motion seeks to deal with. This motion seeks to deal with the issue and principle of confidentiality, one which I think is clearly accepted by all levels of government.

Mr. Hampton: On a point of order, Mr. Chairman: I do not understand what confidentiality is being raised here. I think what is being debated here is something else. What I put before the committee is whether the committee should ask for a report. It is ministerial responsibility for the minister to decide if the government wishes, again, to keep it confidential.

I think what is being talked about here is irrelevant to the question before this committee. If the parliamentary assistant wants to go back and discuss with his officials and with the Attorney General the issue of confidentiality, that is for the Ministry of the Attorney General to deal with, not this committee.

Mr. Chairman: I am inclined to agree, Mr. Hampton, that we are now getting into what purportedly could be the response that would be made when the motion is dealt with. Are there any further comments on the motion? I am ready to vote if you are not---

Mr. Faubert: No. Before we take the vote, could I ask for a 10-minute recess?

Interjections.

Mr. Faubert: You cannot caucus it?

Mr. Chairman: If you have not got all your members, any member is entitled to ask for up to 20 minutes for---

Interjection.

Mr. Chairman: I am sorry, the clerk tells me it does not matter whether all the members are here or not, you can ask for up to 20 minutes.

Mr. Faubert: I have asked for it.

Mr. Chairman: You are asking for a recess until when?

Mr. Hampton: If that is the case, it is 12:30 now and I would ask that this matter be dealt with when we return at two o'clock.

Mr. Chairman: Is there unanimous consent that we recess now until two?

The committee recessed at 12:18 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

POLICE AND SHERIFFS STATUTE LAW AMENDMENT ACT

TUESDAY, MARCH 7, 1989

Afternoon Sitting





STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Faubert, Frank (Scarborough-Ellesmere L) for Mr. Chiarelli

LeBourdais, Linda (Etobicoke West L) for Mr. Mahoney

Clerk: Deller, Deborah

Witnesses:

From the Town of Kincardine:

Mann, Gerald C., Chief, Kincardine Police Force

Wilson, Donna, Mayor

From the Ministry of the Attorney General:

Offer, Steven, Parliamentary Assistant to the Attorney General (Mississauga North L)

From the Ottawa Board of Police Commissioners:

Hill, David H., Chairman

From the Regional Municipality of Waterloo:

Seiling, Ken, Regional Chairman

From the North Bay Police Commission:

Lawlor, Stan

AFTERNOON SITTING

The committee resumed at 2:08 p.m. in room 228.

Mr. Chairman: I recognize a quorum. When last we met, I had just ruled on a motion by Mr. Hampton. Is there any further discussion by any members on the motion?

Mr. Runciman: I was just wondering where Mr. Faubert is.

Mr. Chairman: I do not know.

Mr. Runciman: Tongue in cheek, Mr. Chairman.

Mr. Chairman: Are there any further comments as to where any other member is? All right. We are ready to vote then?

Mr. Farnan: We can wait for Mr. Faubert.

Mr. Chairman: We have people waiting here as delegations and I do not think it is fair to keep them.

Mr. Farnan: After the delegations, I think we all would be agreeable.

Mr. Chairman: Are you ready to vote?

Mr. Farnan: We are waiting until after the delegations. Mr. Faubert expressed comments on this piece of legislation. He obviously feels strongly about it and he would be very concerned. It would be very unfair—

Mr. Chairman: You are out of order, Mr. Farnan. You know you are out of order.

Mr. Farnan: Mr. Chairman, you are the one who is out of order, I think.

Mr. Chairman: Do we have unanimous consent to wait, as I presume Mr. Farnan is asking us to do?

Mr. Polsinelli: Mr. Chairman, we had unanimous consent to take the vote at two o'clock and it is ten after two.

Mr. Chairman: All those in favour of Mr. Hampton's motion?

All those opposed?

Motion negatived.

Mr. Chairman: With the first delegation this afternoon is Gerald Mann who is the chief of the Kincardine Police Force, and Donna Wilson who is the mayor. Are they both here? Welcome to the standing committee on administration of justice.

I understand there is no written brief. We have slated half an hour for your deputation and you can use all of that if you wish or any part of it. If when you have finished your comments there is time remaining, on unanimous consent we have agreed that it would be divided equally among the three

caucuses. Whoever is going to do the presentation might introduce the other person, just for purposes of Hansard. You may proceed.

TOWN OF KINCARDINE

Mr. Mann: My name is Gerald Mann. I am chief of police for the town of Kincardine. I have with me her worship, Mayor Donna Wilson for the town of Kincardine as well. We both intend to do some presenting for you this afternoon. I will start off by giving a little bit of historical background, so that we can take you out of the smoggy city of Toronto and bring you to the fine, sunny beaches of Kincardine, although it may be very cold up there today.

Mr. Kanter: If you can do that today, you are doing very well.

Mr. Mann: Bring your bathing suit. You are welcome.

Mr. Chairman: It is like my front lawn this morning, with fine, icy pieces.

Mr. Mann: To start things off, the town of Kincardine, as most of you should know, is on the shore of Lake Huron. We have a population of about 6,000; it is just under that figure. The police force is at present the size of 10 officers—that includes myself—one full-time civilian and a part-time civilian.

The impact of the bill that is before you on the town is not in our favour, so you will not be hearing any favourable comments from me about it, nor will you be hearing any favourable comments from the mayor.

The court is held in our jurisdiction within the town. We have a session once a week, and in addition to that, once-a-month sessions. At present, the courts are used by both ourselves and the Ontario Provincial Police. Quite often, the Ontario Provincial Police dominate that court session and there is no need for a Kincardine police officer to be there.

It appears from this bill before you that the premisses it was based on are, one, that there is an historical relationship with police forces providing the security for courts within their municipalities, and the other, that there was provision by way of a \$3 unconditional grant to reimburse us.

On the grant, the income for the town is approximately \$8,220 a year, and that is an important figure when you start to look at how it affects us. As the chief of police, if I were directed tomorrow to carry out the provisions of this act, I would have a choice in front of me. One is that I could provide security with a fully trained first-class constable. Should I do that, the cost would be \$8,893 a year. That would be without the officer's working any overtime. That does not include the benefits we have to pay over and above that and I assure you they are substantial for a police officer.

1420

Mr. Sterling: Did you say \$8,000 for the cost of that officer?

Mr. Mann: Yes, \$8,893.

Mr. Kanter: I presume it is just once a month for something like that. It is not everyday duty.



Mr. Mann: That is once a week, and then once a month in addition to that for the Provincial Offences Act.

Mr. Kanter: The figure kind of struck me, too, Mr. Sterling, so I appreciate the question.

Mr. Mann: That is isolating it just to that. The other alternative I would have is to hire a security guard or a security officer to provide the security function within the court. I have been doing some research. The present wage for the sheriff's constable is \$10.56 per hour. It would cost the municipality \$5,456 a year. There would be some additional costs in training that officer and providing the uniform and the equipment, probably a one-shot deal of around \$680. Again, that is without any kind of benefits; I am looking at just pure wages at present.

If all that is available to us is the \$3 grant to assist us in providing this service, you can see it does not meet those cost requirements. Initially, that was brought out to cover the cost of escorts as I am sure has been brought to your attention by other chiefs in front of you.

I want to give you some idea what those escorts cost us. In the town of Kincardine we do not have a young offenders facility. The closest young offenders facility is in Guelph. This means that any time someone is put into custody, we have to transport him from the town of Kincardine to the city of Guelph. Taking roughly a 12 cent per kilometre charge for the operation of our motor vehicle, which is my recent statistic, and the wages of two officers for escort because no one escorts alone, not overtime, it would be \$196.78 per trip. That is once down and back to the town of Kincardine again.

We have from time to time moved somebody over to Pine Hill. It is a correctional facility that is not for detention of young offenders, but ones who are actually serving sentences. On rare occasions we have had to provide transport to there. That has cost us \$102.85 per trip.

The number of trips we perform varies from year to year. I think I should be fair to you and say that we can go from a year such as 1988 where there was only one and a half trips which cost the town \$236.78, to the year before in 1987 where it cost \$6,479.78. In 1989, we have already expended ourselves on two trips down there with the potential that we are going to be spending more time making trips to Guelph.

I hope that gives you some background, especially on the financial side of it. You may ask me, as chief, why I would assign an officer specifically to the court function. Why not just pull somebody from the other duties? Today in the town of Kincardine, I have one sworn officer on the street, and we have court today. I am not providing a court security function today. I cannot, unless I were to bring an officer in on overtime, on time and a half. That would take that \$8,000 figure and just blow it right out of the water.

I will have to make provision by either bringing in officers on overtime or bringing in a so-called part-time police officer or the security guard function. I just do not have the officers available to provide that security function without doing something additional.

If the thought crossed your mind that I am going to be able to perform that function without having to reallocate my officers from present duties, you are wrong. I have one officer on the street and I have the choice of

either providing protection on the street or isolating that officer within a courtroom for an entire eight-hour period.

The impact of the bill is that I would have to remove the officer from the street at present and say, "Go to court security," and he will have to remain there. As you know, if the bill stands the way it is, paragraph 57a(1)2—"During the hours when judges and members of the public are normally present, ensuring the security of the premises"—means that the officer will be there securing an empty building or an empty courtroom.

1420

I am interpreting that I will have to make sure, and I am sure His Honour will want it, that the premises are secured before the court starts, because they are occupying the premises, until some time after he leaves. The officers would fall under the control of the judge and would be required to follow that judge's directions, even beyond court hours. That is what is presently being done, as a matter of fact. Once the officer is in that courtroom, as a matter of fact anyone in the courtroom, he falls under the jurisdiction of the judge and he may order him and direct him as he wishes.

If the judge decides that he is going to have his court go on until seven o'clock or eight o'clock at night, then he will be doing it at our expense without our having any kind of repercussion or any way of going back to him and saying: "This is costing us extra money. We have to have some control factors and you're not helping us with it."

If we go with the security guards, then I have to go with the hiring and equipping. I am not going to put an untrained person into a room and say, "You're responsible for the human beings in this room and the security of these premises," without training him properly. There is no training syllabus, no training system I know of at the present time to specifically train court officers, so we would have to design one of our own and do in-house training. I want you to keep in mind that you are still now at the beaches of Kincardine, not here in Toronto. I do not have all those resources available to me.

The primary responsibility of our police force is to provide protection for the community at large, the town at large. By putting us into the courtroom, you are taking that freedom away from us to provide that protection.

The historical argument that is provided and is one of the bases does not hold much weight. The Sheriffs Act, since inception, has provided court security. It has never been part of the Police Act, so I do not know where the historical part comes out, other than police officers who saw fit and chiefs who saw fit to provide security where there was a gap, to go in there and fill the gap, which we tend to do in policing.

We are always there. We are always willing. We have two communities north and south of the town of Kincardine and we never say no to them when they call us, but we fill the gap. Historically, you could say we are policing those communities, but we are not getting paid for it.

Police forces, since the time they have got caught into it—for example, in the city of Kitchener where they are providing full-time court security—have been trying to get out of that court security, since the day they were given it. It is not a duty they want to perform. The police officers

are overqualified. Their years of training are for law enforcement, investigative technique, not to be security guards.

We are going to take a police officer making \$37,000 a year who has been trained in Aylmer, has gone through an 18-month training phase, and put him into a courtroom where a \$10.56 security guard can provide the same function. We are not even giving the police officer any more than what the security guard would get. We will not have any electronic heavy-metal devices to determine whether or not somebody is bringing in a gun, so the police officer is not providing any special function in preventing people from bringing weapons into the courtroom, no more than any security guard would.

The court offices are judicial buildings, even when they are rented from us. In the case of the town of Kincardine, it is a rented facility through the town and it becomes a judicial building.

Kitchener court judge J. R. H. Kirkpatrick was quoted in the Kitchener-Waterloo Record this past Saturday. He stressed that the courts are trying to remain independent and what we are doing now is drawing police forces and courts closer together.

It is not a happy marriage. It is not one that we want to take part in. Police forces want to remain independent as much as the judges in the judicial aspect of law enforcement. We cannot get ourselves tied up inside those courtrooms and we cannot become part of the court system, and judges have been insisting on that as well, as mentioned by Judge Kirkpatrick.

Our chairperson, Betty Tosz, would have liked to have been here this afternoon. Her husband had to go to the hospital—he is ill—and she wanted me to bring some of her concerns forward. So the following concerns are from the Board of Commissioners of Police of the town of Kincardine.

The first concern, naturally, is the financial aspect of this bill. The \$3 grant, which was initially set up for the escorts of young offenders, is now being broadened to cover yet another whole category. I have described for you the cost of providing police officers, and I have described for you, as well, the cost of having the alternative, security guards. There just is not enough money being provided to us to provide that service.

The board has a mandate, again, of providing the policing services for the town and that is in the Police Act. This particular bill will distract the town, the board of police commissioners, from carrying out that mandate. It also limits their authority and that is something they are very concerned with. Police officers or security officers who are employed by the board of police commissioners would fall under the governing of a judge, and under his or her control.

That judge can use that officer in whatever way he feels fit and direct the officer to whatever duties he wants him to do within the court itself, no matter what the expense is to the town. There would be no control. That is not a satisfactory feeling to the board.

Security guards would end up falling under a collective agreement under the Police Act. Sheriffs' constables at the present time are not organized. They do not fall under a collective agreement. Anyone who has anything to do with the negotiating of police contracts is well aware of the heavy costs and the benefits provided to those police officers. They are quite substantial and the concern is, if you bring those security guards in—call them whatever you



want—they will come under that collective agreement and the costs will escalate.

I will now turn you over to her worship Mayor Wilson for her comments from the town.

Mayor Wilson: Thank you for taking the time to let us talk today. The town of Kincardine is concerned that Bill 187 makes the municipality financially responsible, yet it would have no cost control and the security function would be performed at the whim of a judge. Bill 187 would distract our police force from providing protection and enforcement. Kincardine is not financially reimbursed for this new service. In fact, we are not reimbursed, period.

Apart from the \$3 increment, the police grant has not increased for several years, thus not even keeping up with inflation. Each year, a greater percentage of the police cost is transferred to the local taxpayer. Two years ago, Kincardine increased its court sessions from twice monthly plus once a month to once weekly plus once a month.

We are a rapidly growing community and at present have 2,431 households. We are between Kincardine township and Huron township, with an extra load of 3,330 households for which we get no grants, yet we provide the service, as neither adjoining township has a court system in place.

Out of 31 communities in Bruce county, in 1988, Kincardine was the fastest-growing community and our neighbouring municipality, Huron township, was the second-fastest-growing community. As well, we are a tourist town and our population doubles in the summer months, adding an additional burden on the Kincardine Police Force. The government did not consult the municipalities for their input and this is a further case of the provincial government trying to reduce its costs at the expense of the municipalities.

If I may quote from Pat Pothier, a spokesperson for the Attorney General, she states that "the provincial government does not have enough money to pay for courtroom security any more," making this a financial issue and not a cost-effective solution.

1430

Please put me on record as saying that the town of Kincardine cannot afford the court security costs, even with the \$3 conditional grant, which was originally provided to cover the cost of transportation of young offenders to institutions and will not financially even partially reimburse us for this new service.

The province has not studied alternative solutions or cost-effectiveness, and as I pointed out, the move is not cost-effective for the municipality. With all due respect, I would like to suggest that a study be done on cost-effectiveness, on the cost of hiring a municipal police officer versus a court constable.

The cost of moving prisoners from the county jail to court is a very big expense for Kincardine. If the province would hire a security officer, operated out of the sheriff's department, then he could go from town to town with the judge and crown and would work directly under the judge. The

prisoners could be brought from the county jail and returned by this security officer.

This would make the courts more independent and would be more cost-effective, with lower wages and fewer staff than each municipality providing its own security. This would provide a better control of prisoners and a more efficient movement between jail and court.

I respectfully submit this brief for your consideration and hope you will see our concerns over this matter and look at more realistic alternatives.

Mr. Polsinelli: I have a few brief questions. First, I would like to say that I have no doubt in my mind that if someone were to be responsible for the court facility in Kincardine and I were a justice sitting on that bench, I would rather have Mr. Mann as the chief of police being responsible for the security of that court than some bureaucrat in the provincial Attorney General's office. From my point of view, I think the local chief of police, the local police force, has a greater professionalism and a greater ability than the bureaucrats at Queen's Park in terms of providing the actual security.

You focused quite a bit on the financial impact on the town of Kincardine. As I am sure you are aware, yesterday we had a brief presented to us by the Municipal Police Authorities and the Ontario Association of Chiefs of Police. Just sort of coincidentally, we have a list at the back showing the financial impact on the various towns. For Kincardine, they show a negative impact of \$384. Do you think your town could absorb that type of an impact?

Ms. Wilson: If that were all it was.

Mr. Polsinelli: This is prepared by the chiefs of police for Ontario and it shows an impact of minus \$384, and that is providing a special constable for the court security.

Mr. Mann: That would be providing a security guard, not a fully trained police officer. The other thing that is not being considered there is whether that is the negative impact or just the wages of officers, not including escorts, which are included in that \$3. If you add that, it would be whatever the costs are, so it would be—

Mr. Polsinelli: These are not my figures. They are prepared by the chiefs of police of Ontario.

Mr. Mann: This does not include escorts in it at all. As you are well aware, that will be a pure negative impact for the year 1987, for example.

Mr. Polsinelli: That is right, \$384. The other thing is that in your presentation, you constantly mentioned the cost of providing a fully uniformed officer in the court. You are aware that Bill 187 puts a tremendous amount of confidence in you, as the chief of police, to determine the type of security that would be required by that court and to determine whether a fully uniformed officer would be necessary, a part-time officer, a civilian employee or a security guard. You would be the one who would be responsible for making the determination as to what the court security would be.

Mr. Hampton: I would like to interject. I am not sure you can draw that conclusion from the bill. You have already heard today that a judge in London closed his court because in his view the security that was provided was

inadequate. I think Mr. Polsinelli is trying to draw a conclusion from the legislation that is not there on its face.

Mr. Chairman: Mr. Hampton, when you have your opportunity to ask questions, you can draw your own conclusions too. That goes on all the time here. Perhaps we should go to the mountain and find out if that is the case from the parliamentary assistant to the Attorney General, the member for Mississauga North (Mr. Offer).

Mr. Polsinelli: I would gladly defer to the parliamentary assistant, but I recall, as I am sure Mr. Hampton does, the opening statement by the parliamentary assistant speaking on behalf of the government and the Ministry of the Attorney General was clearly to that effect. I defer to the government spokesman to explain that point to Mr. Hampton.

Mr. Offer: The purpose of this legislation is just to indicate in clear fashion that the responsibility as to how a courthouse is to be secured rests with the local police force. It does not prescribe how that discretion is to be exercised. There is a wide range of options, only limited by the imagination of the chief of police, as to how the courthouse is to be secured. This legislation only seeks to say that the responsibility in making that decision rests with the police. It does not seek to say what that decision should be or ought to be.

Mr. Polsinelli: Perhaps if Mr. Hampton had read the brief that was presented to us yesterday by the Metropolitan Toronto Board of Commissioners of Police, he would have noticed a letter from the Ministry of the Attorney General to Sergeant Beauchesne. I will read it for him:

"I will attempt to clarify those matters as follows:

"(1) There is nothing in Bill 187 which requires police authorities to use fully trained police officers to provide court security. The use of civilian officers is an option which police forces could examine in meeting their responsibility under the proposed legislation."

Essentially, what the bill says is that you are the chief of police. You know what you are doing in terms of the security, in terms of making sure that the safety of individuals is protected. You decide whether in a particular court hearing or in a particular situation you need a fully trained and uniformed officer or whether a part-time civilian employee would be sufficient.

Mr. Chairman: I think the chief wanted to say something.

Mr. Mann: With all that being said, let us get into the reality of it. The judge runs the courtroom; the police chief does not. You can say whatever you like, including in this bill, where it says that we will ensure "the security of judges and of persons taking part in or attending proceedings." To whose satisfaction is that security?

Mr. Polsinelli: Yours.

Mr. Mann: No; to the judge's, because he does rule his courtroom and he will hold me in contempt when he says he is not satisfied with security in there and I will obey. In the town of Kincardine, a police officer on every court day carries a sign out and guards a parking spot for the judge.



Mr. Polsinelli: Guards a parking spot for the judge?

Mr. Mann: Guards a parking spot for the judge. Now, what do we do here? Your theory is great. You have not put into this act that the security will be to the level—

Mr. Polsinelli: Will you repeat that? A police guard—

Mr. Mann: A police officer takes a sign out and puts it out and guards the spot. The sign—

Mr. Polsinelli: To make sure that His Honour has—

Mr. Mann: His parking spot, of course.

Mr. Polsinelli: —his parking spot available.

Mr. Mann: That is right. The judge makes these rulings.

Mr. Polsinelli: Maybe that is something that should go to the attention of the Attorney General.

Mr. Mann: And where do we go? What do we do with this? For example, when I was sworn in on December 12 as the chief of police for the town of Kincardine, the town went out of its way to book an appointment with the judge at a set time. It called the media to be present at the appointment. The members of the board and members of the town council were going to be present at the swearing-in. I arrived early that day because of the bad weather. I came from Kitchener. When I arrived there, the judge said: "It is too stormy out there. Court is finished. I am swearing you in now."

Mr. Polsinelli: It sounds to me that your problem is not with court security but with the particular justice you have on your court.

Mr. Chairman: I think that is something for another—

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Mr. Mann: I am only showing you what the whim of a judge is like. I do not know what your profession is. You may be a lawyer or you may be a judge.

Mr. Hampton: There is a debate here that I want to follow up on. I think you are clear on this, but I want to make sure. If you read the comments in the Zuber report, if you read the comments Mr. Justice Howland gave on the opening of the courts in 1988 and 1989—he is the chief justice of Ontario—and if you read the 1989 report of William D. Lyon, chief judge of the district court of Ontario, you will see there has been an ongoing dispute between the judges of the province and the government of the province. The judges do not think the government is providing adequate security.

Mr. Polsinelli: But that is exactly what it is doing.

Mr. Hampton: I would appreciate it if you would impose on Mr. Polsinelli—

Mr. Chairman: I have just given him the evil eye. He will not do it again, I am sure.

Mr. Hampton: There have been a lot of ad hoc solutions proposed and brought in by the government. Some of these resulted in court action between the municipality of Metropolitan Toronto and the provincial government because the provincial government refused to pay the bills at one point. Now all of a sudden, in my view, what is happening is that by a simple piece of legislation the confrontation that has gone on between the judges of the province and the Ministry of the Attorney General is going to be slapped into your bailiwick.

The judges will say to you: "We do not have adequate security. What are you, as the chief of police of Kincardine, going to do about it?" In the Ministry of the Attorney General, they will throw up their hands and say: "It's not our job. If you don't have enough officers to cover this, don't come to us. It's your job."

I simply want to ask you this: Have you had any input in this?

Mr. Mann: No, I have not. From what I understand, there was not an opportunity until this point for us to get any input into this.

The other thing is that we are missing another alternative that is more economical and would not be a great expense for the province. That is to set up a central agency within that particular district or jurisdiction of that court and have them move along with the court. We have a court that moves from town to town each day of the week. The only one that is not moving with it is the court security or the officer who would be the court security.

It would be much cheaper for the province to run that and it would be well within the \$3. They can take their \$3 back, run that court system and have money left over, but they are not doing that. It is being turned over to us. As you said, I have no control. If the judge directs, and they have in the past—police forces are always at the mercy of the courts—that he wants a first-class constable in there who he feels is trained and qualified, then I will have to obey that direction without recourse.

Mr. Hampton: You are aware that in London, as the mayor of London informed us earlier today, earlier this year a judge actually recessed court because he felt the security measures provided were not adequate.

Mr. Mann: That is correct. The chief would not have had any other choice but to bring it up to the standard of the judge and satisfy the judge.

If the judge gave me an order, even though I was not present in court, or ordered one of my officers in that court, then we would have a choice. We could take it on in a court battle and try to defend ourselves and say we are not in contempt of court by disobeying him and not providing that security. After this bill is established, he would say that it says in the Police Act: "Yes, you are. It says 'ensuring the security of judges,' and I say it is not secure." That judge would have us and I would have no recourse. It does not say in there "to the satisfaction of the board of police commissioners" or "to the satisfaction of the chief of police."

Mr. Hampton: Let me ask you this: We have heard from other police forces that currently Ontario is a changing province. Police forces are being required to be involved with Reduce Impaired Driving Everywhere programs, drug education programs, Crime Stoppers programs and Community Watch programs. Are these demands being made on your police force?

Mr. Mann: They certainly are. We participate in all the programs you

have described. We take pride that we are providing the best possible protection we can for our community, within the resources available, and being realistic.

Mr. Hampton: If the government has its way and Bill 187 passes, and a given judge says on a given day, "I require that you have this," or, "To meet my satisfaction, you have to have the following officers in court," or, "I need the following security measures," what does that do to your budget in terms of covering everything else you have to cover?

Mr. Mann: Before we even get to the budget, as I have already pointed out to you, you are not in Toronto; you are in the town of Kincardine where I have limited resources. If I have only one officer on duty, I now have to do some scrambling to see if I can even find another officer who is not out of town and who can come in and provide that or back it up, or I have to provide it myself. When I have run out, I am the last one. There are no other sworn officers in the town of Kincardine. So yes, there is a financial part of it, but first I have to be able to implement it.

We are not the worst off. If you go to Walkerton, he has fewer police officers to do the same thing with. When he runs out, the well is dry.

Mr. Hampton: I must say I liked your idea of organizing a security force on the basis of the jurisdiction of the court in your case. I have a riding that has a lot of small towns in it and a travelling court. I think it sounds like a good idea.

Mr. Mann: Each community would have to go out at the present time and hunt down someone who would work part-time as a security guard. If we do that in our area—Goderich does it, and Port Elgin, Wingham, Walkerton and Kincardine; we have all these people who are working one or two days a week—first you have to find them and they have to be those do not want to make a full-time living off it, whereas you can hire one person to move around with the court as the court moves around and that person can have a reasonable wage with reasonable benefits and make a living from it.

Mr. Runciman: How long does the court sit normally when it is in your municipality?

Mr. Mann: It can vary. For example, on the morning I was to be sworn in, there was to be court all that day. It was finished some time around 10 o'clock, and I was sworn in shortly after 10.

Mr. Runciman: That can pose a real problem for you as well, I would think, in trying to provide security, when there is no way of really determining how long court is going to be in session. It could be for two, six or eight hours, what have you.

Mr. Mann: That is correct.

Mr. Runciman: It certainly would upset your scheduling, I would think, to try to meet those demands by pulling an officer off assigned duties to do that sort of thing and having to call someone in to assume his or her duties as well. We had a witness this morning, Professor Baar from the University of Toronto. He expressed concern that—

Mr. Chairman: He said he was visiting. He is from Brock University.



Mr. Runciman: A visiting professor? Okay.

With respect to perception in terms of the independence of the courts—you may have mentioned that as well, your worship, with respect to having your officers providing security in the courts—he was concerned about that perception. Also, in terms of the smaller courts across the province, there might be problems develop there as well because of the officers being so close to the operations of the court and having access to information that perhaps they should not have access to, and those kinds of things. Do you see that as a problem as well?

Mr. Mann: I see it as a problem from both sides of it. I am being sympathetic here first off to the judicial system, which has been striving and continues to strive for that independence. From our point of view, I certainly do not want to have officers in the compromising position of being that close to the judiciary.

In the city of Kitchener, that is actually being done at the present time. Offices are shared by the police force within the court building. That exactly does happen. An officer who is in charge of the courts in Kitchener wanders freely within the court building through the office areas of the provincial court side of it and would have that access. I would not say that the police officer would be going around snooping and looking at this stuff, but I certainly do not think you should even tempt people to look at it.

The other thing is that we are not part of the judiciary. These officers are not trained to be part of the judiciary. They do not perform judicial functions whatsoever. They are trained. They go to Aylmer. We spend 18 months. I will invite any of you to please come out and see what we do. I think it would be an education for you.

We go out there and deal directly with the public and the first thing we give is a perception of protection. They see the uniform and the uniform car and we provide a deterrent against anyone who is possibly even thinking about doing some sort of crime.

But once it does occur, our officers are trained to respond to that crisis situation, interview the people who are involved, gather the facts and bring them together, make critical crisis decisions under pressure that are going to take weeks to resolve through the courts, and respond to those decisions they make so that a satisfactory situation comes out of it, so that they can level the crisis or bring the crisis back down to a normal state. It may mean that somebody gets arrested. It may mean the officers have to bring in other social agencies. It may mean they will have to assist in carrying out search warrants.

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Our trade, as police officers, is highly technical. That is why we get paid the big price we are getting paid. That is why there is that much resource and training that goes into developing one officer to do this work. It is not something we put in this nice package, throw him in a uniform and put him out there to make courts secure and leave him there for eight hours. You can, but that would be like taking one of the members of the Legislature, who are qualified people who are supposed to be looking after the interests of Ontario —

Mr. Chairman: What are you going to do with us?

Mr. Mann: —and put him someplace like the beach at Kincardine selling hot dogs. You are not doing your job.

Mr. Chairman: Sounds like a good job. I will take it.

Mr. Mann: You are hired.

Mr. Runciman: This may seem a little off the subject, but do you have much of a relationship with the sheriff's office in your area?

Mr. Mann: No, I have not had much of a relationship with them at all.

Mr. Runciman: The mayor mentioned that this was a financial issue, but I think in some respects it is also a political issue you have found yourself caught up in. The professor was talking about it this morning; I did not have an opportunity to explore it.

In my view, the effort under way to revamp the administration of justice, if you will, is a back-door effort to get at the political appointees of the former administration of this province. There is an effort to regionalize sheriff's offices as well, which this is going to help facilitate simply because we are going to have a significant reduction in the number of sheriffs who were appointees of the previous government. That is really what the Attorney General (Mr. Scott) is attempting to do. We are seeing it happen in licence bureaus as well, where there are rumours about that with respect to appointees of the previous government.

That is the sort of approach we are faced with. I want to put that on the record because that is something that has not been discussed to this point.

Mr. Chairman: I thought you were asking for an answer.

Mr. Runciman: No.

Mr. Sterling: Is there any time left to discuss this?

Mr. Chairman: There actually is about a minute.

Mr. Sterling: I had the opportunity of representing an area that had a number of small police forces like your own, one being the town of Prescott and the other being the town of Kemptville. Kemptville has four police officers and has a weekly court in that area. When I was practising law, I appeared on a few occasions in that court. I had a concern about the presence of the police throughout the whole court day in Kemptville.

When you say you have to have, I presume, a uniformed police officer guarding the parking spot for the judge until he arrives, I have to say I find that totally contrary to the perception of justice we should be giving the public. In a small town, as I experienced it, the police have a difficult time avoiding the appearance of just running the thing from one end to the other.

Would your preference be that the Attorney General or the administration of justice provide that person who goes down and guards the parking spot for that judge?

Mr. Chairman: Mr. Sterling, we may have to park that problem for a

while. I think it is unfair to ask the chief, who may have to appear before that judge, to answer that question. Chief, if you want to answer it, fine. I recommend you do not.

Mr. Mann: I believe in doing what I feel is the proper thing to do—

Mr. Chairman: Good answer.

Mr. Mann: —and I will take it where the chips fall.

First, the officer carries a sign out and parks the sign there for security. He does not have to stand around the whole time, but it is a fact that people in the community see this, and that is not a happy thing to start with. I do not agree with it and I do intend taking to task the fact that our officers are providing that function.

Mr. Chairman: Thank you very much, your worship and chief, for coming from Kincardine. Who knows? Maybe some of us will see you this summer.

Mr. Mann: Sit on the beach.

Mayor Wilson: That beautiful beach.

Mr. Chairman: The next delegation is the Ottawa Board of Police Commissioners, with David H. Hill, chairman of the board, and Arthur R. Rice, chief, Ottawa Police Force. You gentlemen might be kind enough to have a seat. I am not certain. Do we have a written brief?

Interjection: Yes.

Mr. Chairman: Oh, yes; sorry. You have half an hour. You can use all of that time for your presentation, if you wish, or if there is time left over, we will divide it equally among the three parties represented on this committee. Perhaps whoever is going to present it might introduce himself and the other person for the purposes of Hansard.

#### OTTAWA BOARD OF COMMISSIONERS OF POLICE

Mr. Hill: My name is David Hill. I am the chairman of the Ottawa Board of Commissioners of Police. Sitting on my left is Arthur Rice, who is chief of the Ottawa Police Force.

I would like to begin my comments by indicating that the Ottawa Police Force and the Ottawa Board of Commissioners of Police really have no problem with the concept of a municipal force being responsible for court security. They acknowledge there may be some philosophical concern about police being seen to be so much in charge of the court operation, and it is somewhat of a concern, but if security is to be done properly, I find it difficult to understand how you can get away from that perception. There is going to have to be some security force of some type in charge of the court complex. So that is not particularly a worry for us.

In fact, we consider improved court security a very desirable goal and one that should be vigorously pursued by the government. To the extent that this Bill 187 addresses the need for increased court security, it is an excellent legislative initiative.

But there are some major problems. I guess that is why we are here, to



tell you about the "but." We would like to discuss those with you in the hope that the bill, in perhaps an amended form, can go forward but go forward with the problems that are now inherent in it solved.

Funding is one of the major problems. Prior to 1985, some municipalities were having such a difficult time covering their policing costs, including the costs of handling and transporting prisoners, that there was a series of special ad hoc grants applied for and made by the province to certain municipalities to assist them. In 1985, in order to end these appeals from municipalities for financial help for policing, particularly related to transporting and handling prisoners, the then Minister of Municipal Affairs and Housing, Dennis Timbrell, announced an increase in the provincial household grants for policing of \$3 per household, increasing the grants from \$47 to \$50.

I understand that you have had previously circulated a statement made by Dennis Timbrell four years to the day from today, March 7, 1985, with regard to that \$3 increase. I am referring to this statement. If any of you do not have it, there are additional copies available.

Mr. Timbrell's statement is somewhat confusing. On page 3, in the second paragraph, there is a reference to requests "to provide uniformed police in the courts and to assist in the transfer and supervision of prisoners." In the fourth paragraph on page 3, the then minister indicated that the increased grant for policing is "a permanent solution"—is there such a thing in the world?—to the problem and "will replace the special payments" previously made to some municipalities.

The 1985 solution, however, was only implemented with regard to the transfer and supervision of prisoners. It was never implemented anywhere in the province to provide uniformed police in the courts. Court security remained, as it is today, the responsibility of the sheriff's office.

Accordingly, the \$3 increase in household policing grants from the province to municipalities has been interpreted as only relating to the transfer and supervision of prisoners. If it was really intended in 1985 to cover police security in the courts, that was never implemented.

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How has that \$3 increase in household grant fared? I will tell you about the Ottawa experience. The \$3 increase in household policing grants provided the three Ottawa metropolitan forces, that is, Ottawa, city of Gloucester and city of Nepean, with a total of \$616,251 in 1988. In 1988, the cost of looking after prisoner transfer and supervision was \$900,375. Thus, the \$3 increase in household grant for 1988 fell \$284,124 short of the costs of transferring and supervising prisoners.

Whether that \$3 ever completely covered the costs of prisoner control, I really do not know. Certainly, with four years of inflation and with the \$3 component at least, let alone the rest of the household policing grant not increasing, it no longer covers the cost of prisoner control alone. Accordingly, what happens is that the local taxpayer is now picking up over \$284,000 of the cost of prisoner control.

When Bill 187, the bill you are considering, was introduced, there was apparently the thought that the cost to municipal police forces of now assuming court security could also come out of the 1985 \$3 increase in the

household policing grant. As I have indicated, that \$3 component of the household policing grant is already significantly inadequate.

The thought that court security can also be paid out of that same \$3 may originate in Mr. Timbrell's statement that I have referred to, but despite that statement, for four years now police forces have assumed that the \$3 only relates to prisoner control, and in fact what has happened is that court security has been covered by the sheriff's office for the past four years.

In Ottawa, we have conducted a study of the cost to the Ottawa Police Force of taking over the responsibility for court security to the satisfaction of the chief of police. I do not know whether it satisfies the judges. That cost is \$1,407,197 in 1988 dollars if sworn police officers are used, and \$1,036,047 if special constables are used. To assume that the 1985 \$3 increase in the grant will also cover the police cost of assuming court security is patently ridiculous.

The result of Bill 187 financially will be to force Ottawa taxpayers to pay an additional bill of over \$1 million dollars, plus the almost \$300,000 bill they are now paying for prisoner control.

In dealing with funding, I want to talk to you briefly about regional funding, because I would like to point out a unique problem in Ottawa-Carleton. The regional municipality of Ottawa-Carleton is the only region in the province that does not have a regional police force. Each municipality in the region either has its own police force or is policed under contract by the Ontario Provincial Police.

Bill 187 requires court security to be assumed by the municipal police force that has the jurisdiction over the municipality where the courthouse is located. Accordingly, the costs of assuming security for the Ottawa courthouse will fall completely on the Ottawa Police Force, and as I have indicated, on the city of Ottawa taxpayers. The other municipalities in the region, which of course also use the courthouse, are not, under this legislation, required to bear any of the increased cost involved in providing court security. While this puts Ottawa in a unique position, because other regions in the province have regional police forces, it is also quite unfair to Ottawa and its taxpayers.

If Bill 187 goes forward, therefore, we would suggest that this problem be addressed in an amendment to provide that Ottawa be compensated by the other municipalities in the region for the assumption of this sort of cost.

What has been distributed to you is an analysis of the costing I have been talking about. Chief Rice is going to comment further on that analysis. I have a few more comments I would like to make before the chief deals with that document that has been handed out to you.

One of the other problems in Bill 187 as it now stands is a staffing problem. Regular police officers will be very unhappy at standing guard duty in courthouses. That is not what they consider to be policing. It will be a serious morale problem and that will have an effect on our entire police system. If the bill allows for the use of special constables for court security, that will relieve the problem with our sworn officers and the morale problem. We can then recruit special constables specifically for the job. Knowing what they are getting into, presumably they would be content to do the job.

But that gives rise to some other problems. Should these special officers be armed? If they are not armed, is the security sufficient? If they are armed, are they capable of being armed with the training available? If they are capable of being armed, perhaps with special training, I predict they will shortly ask for the same pay as a regular police officer. Then why have a special constable when you are paying the same rate of pay?

If the bill allows it and if local forces go the special constable route, I think they will shortly find, if the special constables are armed, that they will be paying the same price they are now paying for regular police officers. The difference in cost, which is reflected in the costing document we have circulated to you, will then disappear.

In terms of staffing, police are very concerned about shifts, being called to work for short periods of time, and most police collective agreements, including the one in Ottawa, provide premiums for recalls and for short periods. Sometimes our court's hours of operation may not coincide with police staffing. A short court day or an after-hours day may give us large scheduling problems and cost us more than the costing indicated in the document we have circulated to you. The document circulated is not counting any overtime or special premium costs.

I personally feel we can cope with these manpower problems, but I want you to know they exist. They will be difficult to resolve and they may push the costs beyond our estimate of costs that has been provided to you.

I would echo what you have already heard, that we have a concern about who decides what is sufficient security. In the costing, we have arrived at what our chief of police thinks is sufficient security. We have no way of knowing whether the judges will agree with that. If the judges do not agree, the legislation does not indicate who decides. Again, an amendment you might consider would be a requirement that provincial standards be established, either by the Solicitor General's office, the Attorney General's office or both of them, or that those ministries at least mediate if there is a dispute. At the moment, the legislation leaves it up in the air as to what happens and that is a problem for the Ottawa Police Force as well as for the others you have heard from.

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Conclusion: what are the choices we all face? We can leave it as it is and deep-six this bill. It is not very attractive because it leaves a problem of court security unresolved, and as I began by saying, it is a problem we really feel should be addressed. It also ignores the shortages that are now inherent in the \$3 component of the household grant in terms of prisoner control.

The second option is that you can enact Bill 187 as it now stands. That, too, as you may have gathered from my comments and those of others who have appeared before you, is not very attractive. It does address the court security problem, but in doing so it creates a whole bunch of other problems. It forces Ottawa either to increase taxes locally by over \$1 million or reduce policing in Ottawa so as to reallocate \$1 million of existing police resources to court security. This will mean decreases in Ottawa policing that will be drastic and unacceptable. Police Chief Rice will talk about those in a few moments.

It may force Ottawa to begin asking for special provincial grants to



cover the \$1-million increase in costs and thus put us back in the pre-1985 era of special grant requests. I do not think the province wants to see that happen, all of the above or some combination of all of the above.

That option of leaving the bill the way it is now does not address the unfairness to Ottawa caused by the regional situation and the lack of a regional police force. While solving one problem, it just creates too many other problems.

The third option and the one I recommend to you is to modify the bill. Go ahead with some thrust in terms of providing increased court security, but provide funding to do so by increasing the household grants to cover both the present shortfall that the \$3 was supposed to cover and now does not, as well as the increased cost of providing court security.

Presumably the province can save in the costs of the sheriff's office as that official is being relieved of court security duties. It is our view that the province is responsible for the administration of justice in Ontario. In modifying the household policing grant, the unique system in Ottawa and in the regional municipality of Ottawa-Carleton can be addressed in modifying the household policing grant. Consideration could be given to indexing it to inflation or to having a regular review system, because whatever the grant is today it will not be enough tomorrow. We have seen what happens to the \$3 1985 increase.

Sure, it may cost the province something, even counting its savings in the sheriff's office operation, but if court security is worth doing, and I believe it is, it is worth doing right. It is provincial money well spent. To solve the problem, as this legislation does, by creating other problems is a half-baked solution. Please do not be half-baked.

Police Chief Rice would like to talk to you briefly about three things at least and maybe others: one, the costing document we have provided to you; two, the staffing problem I have alluded to; and three, what would happen if he had to reallocate \$1 million worth of resources to provide court security.

Following his comments, we would be pleased to answer any questions.

Mr. Rice: I will do my best not to repeat what Mr. Hill has already said.

Mr. Chairman: It is all right; we all do it.

Mr. Rice: First, I would like to give you an overview of just what Ottawa is, for those of you who have not had the opportunity to visit Canada's capital recently. We are the hub of a large regional area with five police forces: Ottawa, Nepean, Gloucester, the Ontario Provincial Police which polices Kanata, Cumberland, rural areas and the Queensway and the Royal Canadian Mounted Police. Yet under Bill 187 Ottawa would have to bear the entire financial load, because the courthouse is situated in our municipality.

We have a population of 304,000; we also police the city of Vanier, for a total population of 323,000. We are the seat of federal government and we have a unique responsibility for handling demonstrations, visiting heads of state and so forth, working of course in close co-operation with the RCMP. As a result, the citizens of Ottawa are already bearing a taxation burden that is

not placed on the shoulders of most other municipalities, which are not in a like situation.

A document you all have has been prepared showing the costs. These costs have been developed as a result of a study conducted at the courthouse complex located at 161 Elgin Street, which houses the district court and the provincial court, criminal, civil and family divisions. In this complex there are a total of 27 courtrooms and four motion rooms for which security is currently being supplied by the sheriff's office.

As you will note, we are not zeroing in on the use of police officers. We provided a costing which shows, in the first year, slightly in excess of \$1 million and in the fourth year \$1.4 million, in effect because if first-class constables would be used in the first year the actual cost would be \$1.4 million. In all of these figures, of course, I am using 1988 salaries. On the other hand, if we were to hire special constables, the first year's costs would be \$891,000.

I am sure special constables could handle the job very well, but there is an underlying concern here, and that concern is that in the hiring of special constables, under the present Police Act, the employment responsibility is taken away from the local board of commissioners of police and placed in the hands of the judge who swears them in. In other words, the board can hire but it cannot fire. So there is an underlying concern there.

As has already been indicated, the household grant of \$3 per household is insufficient to pay for our present costs. At the present time, we have court security officers at the complex at 161 Elgin Street for the transportation and security of prisoners. In this operation, we have entered into an agreement with the cities of Nepean and Gloucester and we receive financial support for this particular function.

We recover from the Ministry of Correctional Services \$65,000 for the transportation of prisoners from regional detention centres to the courthouse. A further \$133,500 is recovered from area police forces, namely, Nepean and Gloucester, the Ontario Provincial Police and the Royal Canadian Mounted Police, for the transportation and security of prisoners while in custody at the courthouse. The \$133,500 that we recover is, I believe, about \$66,000 less than the per-household grant given to Gloucester and Nepean, so they do make a profit on that household grant. A regional force, of course, would probably rectify things to a certain degree.

Our court security costs, of which I have just been talking, amount to \$1,098,000. When we take the recoveries away, we have a net cost of \$900,000.

In doing the costing in this document, we have looked at the courtroom security only. We have not looked at the perimeter of the building or shift work. Therefore, there is an unforeseen cost that may be added to this. The manpower problems, as I see them, and as has already been stated by my chairman, are that police constables are looking for career opportunities, not court security jobs.

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Again I ask the question with respect to special constables, should they be armed? There are concerns that have already been voiced. I am sure, because it has already been stated by the police association, that if they are armed, the following year they would approach the board for equal status with

constables. If that were not granted, I am sure they would go to arbitration.

Again, I have concerns with special constables because of the loss of jurisdiction by the local board. If this bill is passed, as I see it, I would have to present a budget to my board. If the board failed to agree with that budget or with the additional manpower—when we are talking about manpower, it means one sergeant and 29 constables or one supervisor and 29 special constables—if the board indicated that it could not in all good conscience pass the budget and advised me to make do with the resources I had, then the only places I could look at would be, for one, my community services section.

I believe Ottawa is foremost in the country in the development of community services and multicultural programs. We have a youth section, a school patrol section, a safety village for children, and crime prevention, community patrol and victim crisis units. There is no doubt that we cannot take men off the street who are enforcing the laws, nor can we take our investigators off major crimes. I would have to look at that area. I would have to look at the Reduce Impaired Driving Everywhere program and the roadside checks. Could we continue those at the same level we are at now?

The drug problem in the world is increasing rapidly. In Canada, looking at what is happening in Toronto, it has got to the point where we have lost control. In Ottawa, we have just put out another enforcement squad to try to keep a lid on things with respect to illegal drugs. That is another area where I would probably have to withdraw.

I am not saying these things because I want to create concern or fear in anybody's mind, but I do not see any other areas where we could take people off so we could fulfil the obligations we would have under Bill 187.

To look at it from another point of view, if the board did accept my budget recommendations, then I am almost positive city council would end up in an appeal process before the Ontario Police Commission which, if Bill 187 became law, would virtually be able to do little about it. It would create, I am sure, grave concerns among the taxpayers of the city of Ottawa and the city of Vanier.

That concludes my comments, Mr. Chairman.

Mr. Chairman: Thank you very much. Unfortunately, we have exhausted the 30 minutes. Unless I have unanimous consent, we cannot extend that. I remind committee that we are an hour behind schedule and there are other deputants waiting, but if you wish to give unanimous consent for questions, I am open to that.

Mr. Sterling: I would like some opportunity to question for a short period of time.

Mr. Chairman: All right, unanimous consent that we extend it. To what? Somebody give me some idea.

Mr. Polsinelli: I think Mr. Sterling should be allowed the opportunity to ask some questions.

Mr. Hampton: Five minutes each.

Mr. Chairman: Five minutes each, with unanimous consent. All right. Mr. Sterling, Mr. McGuinty and Mr. Hampton.



Mr. Sterling: On Monday morning we had a briefing with regard to this piece of legislation. I asked a specific question as to whether the province would provide guidelines for minimum levels of court security so that in a dispute between the justices and the police, as given the power under here, there would be some benchmark to rely on. The Attorney General (Mr. Scott) indicated to me and to this committee that the province would not, with purpose, issue those guidelines. I do not know how that specific problem is going to be resolved. I invite the AG to intervene if I am misinterpreting what he said.

Second, I asked about the savings that the sheriff's office would have. They were going to give me a printout of what those savings were, but they thought they would not be substantial.

We have heard from other groups, and I was intrigued by your comments that you thought this was a half-baked bill. I am interested in the positive half of this bill. I know the negative half: Metropolitan Toronto felt that court security might be worse after this bill than before it, because of the squeeze on budget that would come on its municipal police force. I am interested to know how you view Bill 187 as improving court security in Ottawa-Carleton.

Mr. Hill: I have some familiarity with the present court security level in that I am a practising lawyer in Ottawa-Carleton. I do not think it is adequate in terms of the quality and the type of people providing the security. I think that if sworn, uniformed, armed police officers were doing it, it would be a higher level of security than it is now.

I recognize the risk, in a budget crunch, of doing a half-baked job in court security and not doing the proper job because of not having the proper funding. I do not think that would happen with our police force. I suspect what would suffer, as the chief has said, is not the court security but the other areas of policing, particularly community policing. The result of that suffering will probably be seen a couple of years later when the crime rates go up because the community policing is not being done. I do not see that the court security would suffer. I think we do a good job. I think other parts would suffer instead.

Mr. Rice: I might add to that, with respect to court security, at the present time there is fairly good security at the back door—that is, where the prisoners come in and are looked after and taken to the various courts—but there is virtually no security at the front door. Anybody can wander into the court facility without being challenged, without being checked.

Mr. Sterling: Have we had any incidents in the Ottawa courtrooms? I am not aware of any that were publicized.

Mr. Rice: None that I know of, just off the top, but the sheriff in Ottawa is well aware of the fact that if he does have a concern or hears of a concern, he can call on the local police for assistance. I just emphasize the security aspect in the perimeter of the building.

Mr. Sterling: Given the choice of accepting Bill 187 as it now stands or rejecting it, what would be your recommendation to this committee?

Mr. Rice: To pay for the full cost of it.

Mr. Sterling: Without that promise, which obviously this government has not given.

Mr. Hill: Neither. You offer unacceptable choices.

1530

Mr. McGuinty: I think you are very clear, Chief Rice, on a point that was somewhat confused in the minds of others who appeared before the committee, and that is, the bill does give the option of using other than police officers for this protective service. You outline the two options here: the cost of police officers and the cost of special constables.

You say that perhaps the most important reason for opting for the second would be that it is simply an inappropriate duty for a police officer. As an analogy, in the old days when you had police officers patrolling parking meters, it was clearly a duty not appropriate to a fully fledged police officer. Now we have our green hornets, as we call them in Ottawa.

You also say that costwise, while there might be an incidental saving at the outset, you would suspect that over a period of time, the special constable costs would be inflated up to be on a par with the regular police officers.

Mr. Rice: As I indicate in my document, the per capita grant of \$3 per household amounts to \$616,000. If you look on page 2, using special constables in their third year, using our pay scale it would amount to in excess of \$1 million. It is quite a difference.

I also went on to indicate that, because of the job that they are performing and particularly if they are armed, I have no doubt in my mind that the association would bargain for parity with the regular law enforcement part of the force—sworn officers.

Mr. McGuinty: Also, the government has been criticized for not specifying guidelines for the qualifications and training of these constables. One response to that is that the police are the ones most competent to determine what this training and qualification should be. If that were the case, could you foresee any problems, for example, if a judge were to intervene and rule in this area? Could you foresee any likelihood of problems or friction arising in that regard?

Mr. Rice: I could see the training that we give police constables being quite adequate for the special constable, but again I would feel that would be another step in a direction the association would probably like to see us go because it is for ever trying to bring civilian groups and special constable groups in line with the sworn constables' contract.

The other underlying problem I mentioned was the fact that there is a section in the Police Act—I cannot think of the section at the moment—whereby special constables are sworn in by judges. In doing that, the authority of the local police commission is eroded. The officers can be disciplined, but little else. They cannot be dispensed with unless the judge who swears them in is brought into the picture. From what I understand, I do not think they would like to become involved. So it may require a change in the Police Act to cover this.

Mr. Hampton: I want to ask a couple of questions about your initial statement. Several of the other organizations that have appeared have said this. The deputy chief of the Metropolitan Toronto Police made the point yesterday that, in his perspective, the courts are trying to increase their

independence. In other words, they do not want to be so closely intertwined with the police that the public perception is that the same police who charge people, bring them to court and give evidence against them are also providing security for the judges, who may pass sentence on the individuals or who may decide if they are guilty or not.

The deputy chief of police here in Toronto said that is a problem. They recognize that the justices want to be seen as being independent from the police. He said that he also wanted the police to be seen as being independent from the judiciary. He thought that for the administration and the delivery of justice, particularly from the perception of the public, that is an important thing to preserve.

How do you feel about that?

Mr. Rice: I think I would have to agree with him, at least in principle at the moment. For example, the province has changed the Police Act, which eliminates judges from becoming members of police commissions; not that I agree with that change, but I suppose it was because it felt the judiciary was getting too close to law enforcement. In implementing Bill 187, it puts them right back into the picture. What does the province want? Does it want judges to be involved with law enforcement agencies or does it want to create a separation?

Mr. Hill: If I can just add to that, that partly comes down to who makes the ultimate call on what security is sufficient. If the judges do, then that comment is right. If it can be taken away from the judges and there is a standard put out, that I talked about, through the Ministry of the Attorney General and the Ministry of the Solicitor General, maybe that helps a bit.

I agree there is a concern on the perception that you talked about. I am not sure that any solution you find is going to completely get away from that perception. If you set up a special security force to deal just with courthouses that is employed by the provincial crown who is also prosecuting offenders, I am not sure that you get away from the perception enough to make a big difference.

I recognize the perception as maybe a problem, but I am not sure what solution can be put forward that solves the problem any better than having a municipal force do it.

Mr. Hampton: We had before us today a professor who is a visiting professor at the University of Toronto. He outlined that in British Columbia, what the government did was to take the people who provide police security totally out from any connection with the police force. It is a protection force, as I understand it from his comments this morning, that is run by the provincial government, and that was their concern.

It is also my understanding that most other provinces—

Mr. Sterling: All of them now.

Mr. Hampton: —have tended to go in the other direction from what the government is proposing here; that is, to increase the independence of the judiciary from the police force and of the police force from the judiciary. This issue of court security is one thing they have focused on in terms of increasing that independence and increasing the public perception of that independence.



Mr. Hill: I can appreciate that possibility. It would be interesting to know what the perception of the man in the street or the citizens involved in the court system is in British Columbia, as opposed to what it would be under this bill, in terms of whether the British Columbia court security force, or whatever they call it, is independent of the people who are in fact prosecuting and acting as witnesses. If that solves the problem, then it is perhaps a solution we should look at. I am not convinced that it solves the problem, but maybe it does.

Mr. Chairman: Thank you very much. We appreciate your coming all the way from Ottawa. Perhaps you can carry our echoes back to Ottawa and say hello to the people there, including those on the Hill.

Mr. Hill: Thank you very much, Mr. Chairman. We will be pleased to do that.

Mr. Chairman: The next delegation we have to appear before us is the regional municipality of Waterloo, Ken Seiling, regional chairman. Welcome, Mr. Seiling. Have a seat. You have half an hour. You can use all of that or any part of it for your brief. If there is time left over, we will allocate it equally among the three parties represented on this committee.

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#### REGIONAL MUNICIPALITY OF WATERLOO

Chairman Seiling: Thank you. I realize it is late in the afternoon. I feel like I am sitting in the chair at a council meeting after about the 10th delegation, so I can sympathize with you. I do not intend to take the full time. I did not bring a cadre of staff with me, either.

Mr. Chairman: It does not matter. If you do not take the full time, the rest of them will.

Chairman Seiling: There are a few typos. I had a problem this morning. We had a lack of quorum at the licensing committee so I got hauled in to serve on the licensing committee while we were trying to get this thing through the word processor, so it is here totally unproofed.

At any rate, I would like to thank the committee for giving me the opportunity to appear today. I am sure you have heard everything I am going to say. However, I felt it important that I do come so you could understand the widespread opposition to what is being proposed in Bill 187. As I am sure you are by now fully aware of the nature of the arguments being presented, I propose to make a brief presentation and discuss the impact on our particular region.

Many years ago, the province assumed the costs of the administration of justice. The intent was good and if you read the literature, as I understand it, there is a need to separate the roles of the police and the court system. The submission of the Municipal Police Authorities, the Ontario Association of Chiefs of Police and the Association of Municipalities of Ontario deals at some length with the question of responsibility.

I have also attached a copy of a letter from His Honour Judge J. R. Kirkpatrick, a long-standing member of the judiciary, more than 30 years, and a member of the local police commission, to the Honourable Ian Scott, which addressed the same point. I would like to read portions of it into the record.

This letter was written December 1987, not in the context of this present bill or the changes proposed; there are some qualifications to it. This is Judge Kirkpatrick writing:

"I am informed that you may be tiring of the barrage of criticism of the Zuber report. Nevertheless, I wish to comment on an approach to court security and the enforcement of court orders which I believe to be 'make-do' with the forces at hand and basically wrong in principle.

"I submit that consideration should be given to the principle that once a citizen has been arrested or charged, further police contact should be terminated and that the court function should commence. In order to accomplish this, the court should be serviced by a sheriff's force under the jurisdiction of the Attorney General, a greatly expanded force composed of individuals with the education, physical capabilities and training to perform all functions of court security, prisoner escort, the service of summonses and subpoenas, the execution of committal warrants, the arrest of persons failing to appear in court or in breach of probation.

"In addition to ensuring fair treatment of the accused by protecting him from unauthorized and informal interrogations en route to court or in the court building, it would enhance the public's perception of the police as law enforcement officers and free them from the charges of intimidation, mistreatment, etc. Mr. Justice Zuber looks at the size and composition of the existing sheriff's force—where court officers are often very aged ex-police—and he dismisses it as a viable force to serve and execute the papers and orders of the courts, to maintain court security and to transport prisoners.

"Nevertheless, he seems to acknowledge the sheriff's responsibilities in these areas and recommends giving them supervisory authority over municipal and OPP officers assigned or seconded for these duties. This, of course, will lead to much controversy when something goes wrong and the policeman says, 'I was following the orders of the sheriff' or 'the orders of the chief of police.' The sheriff may say, 'The chief is responsible for the debacle,' while the chief blames the sheriff. Another scenario could be, 'I couldn't respond to the strike because all my men were tied up in the courts.'

"It is submitted that we should go back to the basic principle that once an accused person enters the court process, he becomes the responsibility of the court, which will monitor his custody and appearances in court. The police should have no further contact with him except by his consent or that of his lawyer."

The next section is about who the judge says he seems to feel should do the work, and I do not want to enter into whether it is men or women in this particular case. I will just jump down.

"We haven't rid our justice system of police courts entirely, not even at the Supreme Court and/or district court levels, and certainly not at the provincial court level. Whatever became of our desire to end the perception of the police controlling the judicial process? We removed police courts from police buildings and police prosecutors from criminal trials. We limited the time an arrestee could be held in a local lockup. Nevertheless, today, to the perception of the public, our courts are run by police who are ever present in the courts to bring in prisoners, advise the prosecutor, maintain order in the courtrooms and run messages.

"The accused's perception must be that law enforcement and justice, if not a blended operation, is at least a cosy partnership.

"The creation of sheriff's forces would not be difficult. Many of the police now serving in courts might transfer. The sheriff's new assistant would have to be one with adequate administrative experience and knowledge of court security and prisoner transportation.

"Is there a reason why our society should not be building institutions for the future instead of compromising principles and jeopardizing operations by trying to retain administrative supervision in one branch and operational responsibilities in another in a make-do arrangement?"

That was submitted by Judge Kirkpatrick. I think it goes right to the heart of the argument.

I must say that I really cannot agree with my friends from Ottawa who preceded me, if I understood their argument correctly. I have been involved with policing for many years. I was on the police commission for five years and served as chairman. I have a great deal of respect for them, but I know police will expand to do anything you give them to do if they are interested in it.

I raise this issue because I think it leads to a very serious problem that is emerging in Ontario. To say that the relationship between the provincial government and the municipalities of Ontario is deteriorating is probably a fair statement. I can think of no time in the last decade or more when the relationship has been so troubled.

There are a number of reasons this has occurred, but the root of the problem appears to be a failure on the part of the government to fully understand or study the impact of its policies on municipalities. There is also a perception that the province is shifting more and more responsibility to the municipalities without adequate funding. In some cases, the shift is of provincial responsibilities.

Let me give you just a few examples of what we are seeing in the municipalities. I should also add that at the regions, many of the services are legislated or are joint services with the province. Please excuse me for giving you this little crying session, but I want to get my plug in here. This is part of the problem, because we are dealing with it in the context of a lot of other things that are going on at the same time.

The government has required pay equity in all services including those that are cost-shared. Although many municipalities have developed or are developing their plans and addressing inequities, the province at this time has refused to acknowledge its share of financing, even though cost-sharing is set out in legislation and regulations.

The government has announced major initiatives in areas such as day care, but refuses to acknowledge the actual costs in urbanized areas, therefore technically breaking the cost-sharing ratio and forcing costs on to municipalities.

Major urban centres are being required to undertake large-scale environmental works with limited provincial funding. The recent expansion of funding for some projects from 15 per cent to 33 per cent for environmental projects in the regions, I should add, is helpful but is still small in



relation to project costs and small relative to grants given to smaller municipalities.

The Treasurer (Mr. R. F. Nixon) has suggested that municipalities are in a better financial position than the province. This may very well be true in some cases, but is a result of at least two factors. Local governments must balance their budgets by law. Many capital projects are planned carefully to avoid large-scale borrowing, a measure of fiscal responsibility promoted by the province itself. Now it is suggested that good planning should be penalized in some cases in an effort to offload provincial responsibilities. In reality, due to major water, sewage and building projects, the regional municipality of Waterloo will reach its borrowing capacity by the end of this year.

Road funding, a major concern of the municipalities, is a serious problem, particularly in the regions. In the regional municipality of Waterloo, the road funding in actual dollars for 1989 is less than that received in 1981. This year the government unilaterally froze road funding without warning or consultation. Effective subsidy rates in the region of Waterloo for 1989 will be approximately 33 per cent, a far cry from the traditional 91 per cent or even the 50 per cent standard.

Unconditional grants to municipalities have been frozen this year, including the police household grants.

The province is proposing to have the municipalities provide financial assistance for affordable housing without any recognition of the servicing costs and problems related to such developments. It is also proposing that school capital financing move into the area of lot levy financing, one of the municipal sources of financing, thus putting greater pressure on this area and limiting the funding available to municipalities. Shortfalls in local school financial capital support will have to be raised through local property taxes.

Some of the new programs for housing development such as housing registries were normally funded totally by the province. New initiatives now require municipal cost-sharing. Other programs such as home sharing require municipal money and the province will not match without local municipal support, even if other funding is available.

That is just to set the stage of some of the concerns. Let me turn to the impact of the proposed legislation as it affects the regional municipality of Waterloo.

I sat as a member of the police commission for five years, two of which I served as chairman. Court security was always on our agenda as we objected to the costs being assumed by the region and the fact that we were aware the province had an unfair patchwork of special arrangements which seemed to favour some areas. It always seemed interesting that the city of London had money for court costs while the rest of us had to pay for it. There were other examples across the province, we understood. Aside from the philosophical question of who should really be supplying the service, we felt that at a minimum the province should at least pay for the service we supplied to them.

The Attorney General (Mr. Scott) has argued that an increase in the provincial grant per household was made in 1985 to assist municipalities with the cost of court security. In 1988, that grant equated to \$377,712. Our actual costs in 1988 were approximately \$708,221.

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At the last minute I put together and discussed this with the deputy chief just before I left this morning. There is a sheet at page 6 showing you the impact of the legislation as it is understood by our staff. Our current situation—this is in 1988 dollars—shows that our current cost for providing court security and transportation is \$808,221. We receive recoverables of \$100,000 from the province. If you take off the household grant, it leaves us picking up \$330,509 at the present time.

If we use constables to supply the court security, as we understand it, the current cost then would be added to by the additional staff of 21 or 22 officers, less the household grant. The new cost would be approximately \$1.5 million. If we were to use civilians for the new additional staff, it is estimated that the total cost would be \$1,234,000. That is a sizeable increase in cost for court security, which is a provincial responsibility. In fact, that is 1988 salary costs and does not include any other costs such as space, furnishings or anything else there.

How will the region deal with such an impact? One could suggest that if the province were to act unilaterally and impose this transfer of provincial responsibility on to the property tax base, the municipalities might simply refuse to provide the service and let the provincereact. I am not suggesting that, but that is obviously one option.

There are really only two other alternatives. The first would be to raise the necessary funds through the property tax base. In our case, this would represent approximately two per cent plus on the regional tax levy. I might add that the region of Waterloo, because of provincial funding, growth and a number of other factors, is currently—last year and this year—looking at tax increases in excess of 10 per cent per annum from the region, and with the built-in components is looking at probably in excess of 10 to 12 per cent for the next few years.

This would come on top of those kinds of tax increases. Since the property tax base is not a particularly progressive form of taxation, it would be felt most by those less able to afford it. It would also violate an important principle in that general provincial services should be funded through the more progressive income tax system.

The other alternative is to remove 25 to 30 constables from their work to fulfil the court function. In our region, we have recently completed a major study on policing, which has been accepted in principle by regional council. The study was in reference to levels of policing and a policing philosophy. The major recommendations were to increase the complement and to move to a community-based style of policing.

These increases in manpower would be the first increases of major proportion since the region was formed in 1973. The increases were to be phased in over a number of years, starting in 1988, and would respond to the growth in demand for police service by the community, the actual rapid growth of the region itself and the move to community-based policing. In 1988-89, approximately 42 new officers were added or were proposed to be added, in addition to many new civilian employees. Most of these officers will be lost for community policing if we are forced to transfer more officers to the courts.

It seems almost ludicrous that the province would force the

municipalities to man the courts with highly trained, expensive and much needed police manpower or police womanpower in terms of the communities' pressing police needs. Recently a judge commented to me that the occupational hazards of the bench were relatively small in comparison to many other occupations. This particular judge had a great deal of difficulty understanding how such precious resources could be diverted to the courts when other means were philosophically and practically more suitable. I tend to agree with him. Certainly, there has been no track record of problems in our courts.

In summary, I would like to register in the strongest terms possible the objections of the regional municipality of Waterloo to the proposed legislation. I have provided for you in the material a copy of the resolution passed by regional council on January 26, 1989.

We oppose the unilateral transfer of a provincial responsibility to municipalities without full compensation. The failure of the province to fully fund the current unsatisfactory arrangements cannot continue. The province should establish its own independent court security system and allow policewomen and policemen to do the jobs for which they were hired. If the province is not prepared to do this, it should, at a minimum, fully recompense the municipalities for providing a provincial service.

Mr. Chairman: We have about 15 minutes left, five minutes for each caucus. I have Mr. Runciman first and then Mr. Farnan.

Mr. Runciman: Mr. Seiling, I want to say at the outset that I share your views with respect to the chairperson, I guess it was, of the Ottawa Board of Police Commissioners. I am not sure the city of Ottawa was well served. In any event, that is another thing. We can get into it at some length after this is over and I can perhaps explain to you some of the rationale behind that.

I was intrigued by the judge's letter about the sheriff's officers and the expansion of that office to provide the security. You say the region is providing the security now. Is that right? How are you doing that? You are doing it for a net cost of about \$300,000. How are you doing that?

Chairman Seiling: We provide manpower to the courts directly in terms of security and also through the transportation of prisoners. We have men allocated to that particular role.

Mr. Runciman: What kind of men?

Chairman Seiling: Sworn officers.

Mr. Runciman: But they are not police officers?

Chairman Seiling: Yes, they are.

Mr. Runciman: I guess I am having difficulty understanding the impact statement you have here. You are talking about current costs. Then you have a proposal using constables. You are already using constables.

Chairman Seiling: The current costs refer to existing constables who are assigned to the courts. We have constables in the courts who are doing



security, constables who are doing transportation of prisoners and constables who are doing case management in the courts.

Mr. Runciman: Why would that change?

Chairman Seiling: We are not proposing to change it. That is the base right now. That is the base for this costing. What the legislation would do is require us to staff up to staff all courts. We are not staffing all courts.

Mr. Runciman: That is your interpretation. I am sure we will hear other views on that. You are saying you will have to beef up your staff by the cost of \$1 million plus.

Chairman Seiling: That is right. The analysis is provided in the material at the back of my submission. I have to acknowledge that I am not technically competent to deal with how the deputy chief has calculated this, but the department has taken the legislation, interpreted it to the best of its ability and provided an analysis which is attached here. It came up with these costs, showing the increase in manpower.

Mr. Runciman: Okay. You are not using the services of the sheriff's office at all, but obviously the provincial judge in your area feels that would be an appropriate alternative.

Chairman Seiling: Yes.

Mr. Runciman: I was also taken by your comment about the judge commenting—I am not sure if it was the same judge—about the occupational hazards of the bench being relatively small in comparison to many other occupations. From my recollection of problems in the courts, and this was pointed out quite clearly by one of our witnesses this morning, most of the problems in the last number of years in Ontario have originated in family court, not criminal court. In your experience, you have had no difficulties whatsoever within the court in the Waterloo region.

Chairman Seiling: I am not aware of any.

Mr. Runciman: I think that is the common experience right across the province.

You went on with a host of problems with regard to funding arrangements with the province and we can appreciate your concerns in that respect, but I am not sure you are going to get a sympathetic ear from my colleagues directly opposite. I just want to put something on the record. Mayor Mike Bradley of Sarnia, when this question was put to him with respect to Bill 187, was outraged at Mrs. Smith's response to a question in the House from our leader. It was suggested to the minister that many municipalities simply could not afford to provide court security and the Solicitor General's response was, "That's their problem." I thought we should have that on the record again.

One of the witnesses before us had a unique suggestion about the \$3 per capita that supposedly is covering your costs in this regard. He said, "We'll let the province take that \$3 back and let the justice system assume the responsibility for policing." I suppose you would accept that as an alternative as well.

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Chairman Seiling: I certainly would. That issue is an issue not just in policing but in other areas where the province is trying to cap its costs. There are certain services, such as day care. I know this is not a hearing on day care, but the parallel is there. Some of us in the municipal field have said that if the province feels it can run day care on the costs it is suggesting we do in the urban centres, maybe we should turn it back to the province and let it run it at those costs.

I think the same principle applies here. I do not have any political affiliations. I do not have any axes to grind. What I am trying to do is paint for you the context in which the municipalities find themselves today. This issue is not a single issue, but one of many issues where there is so much being forced back on the property tax base. That was the intent of raising those issues.

There is a parallel that is emerging there in day care. I have heard more militancy among the municipalities about what they are prepared to do and are not prepared to do in the last two months than I have ever heard in my municipal career.

Mr. Sterling: We had a briefing paper presented to us with regard to the unconditional grants program. I understand the police grant is an unconditional grant. In other words, it is paid to the municipality and you can spend it on policing, on day care, on garbage collection or whatever. That is your choice. But it is in recognition that there is an expenditure you have to make.

Reading from our briefing paper that was prepared by the municipal finance branch, August 19, 1987, it says: "The critical point, however, is that the \$50 per household is a recognition of the higher expenditures incurred by some municipalities for all police services, not just the specific two just mentioned." That is referring to transfer of prisoners and court security. "Therefore, any attempt to allocate any part of the grant would not only violate the unconditional principles of the entire program, but would be met with considerable municipal opposition."

In other words, you cannot really take part of an unconditional grant and say it is for this or it is for that. It is really just a payment. Therefore, the whole argument with regard to the \$3 is a bit of a hoax, as far as I am concerned.

Chairman Seiling: Can I respond to that? I think the argument was raised by the Attorney General himself in the letter he sent out to municipalities, saying, "Here's the money we gave you to cover the service." We did not raise that argument. He raised the argument.

Mr. Farnan: First, I would like to congratulate the chairman of Waterloo region on the excellent brief. Could you tell the committee the approximate population of the region.

Chairman Seiling: The region has approximately 350,000 people.

Mr. Farnan: What form of consultation did the region have with regard to Bill 187? Was the region invited to provide input into this bill?

Chairman Seiling: The first notice we had of Bill 187—at least,

that I had—was a letter from the Attorney General on November 16 of last year, indicating they were proposing to introduce this in the House.

Mr. Farnan: Would it be fair to say that basically there was no consultation, at least with the region of Waterloo, with regard to this particular legislation?

Chairman Seiling: I am aware of none prior to the letter from the Attorney General in November.

Mr. Farnan: Could you comment very briefly, because I have another question I want to ask you, on what you mean by a community-based style of policing.

Chairman Seiling: In our region, the number of officers has been held down since the region was formed. Over the past two or three years, we have attempted to come to grips with the kinds of facilities we need for policing, and to come to grips with some of the infrastructure problems of the police force that developed during the lean years.

As a result of that, we hired a consultant and did a community study. We decided, first, that given the current workload, the forces were in fact undermanned and there was a problem. Second, they wanted to move the focus of their policing from being reactive policing to what they call community-based policing. In other words, there would be manpower available within the communities identified by the people. There would be relationships developing. It would be a more proactive type of policing.

Regional council received the report, choked a bit and said: "We can't buy the 125 officers you want to do this. We're prepared to look at implementing it in phases." So last year and this year was the first time the forces had any appreciable increase in manpower, practically since the region was formed in 1973. Last year it was about 20 officers. This year, I think it was 22.

Mr. Farnan: Is there the potential this legislation could impede the progress of the direction of the Waterloo region towards community-based policing?

Chairman Seiling: Certainly, if we are charged with financing the increased court security, as our staff has interpreted it—and I qualify that by saying everybody is interpreting legislation, but nobody really knows what the legislation means actually until we get stricter guidelines. But taking it at its face value, we are looking at a staff of probably 20 to 25 officers or persons plus whatever support staff would be necessary. That is our understanding of it. That would take one complete year of hiring.

Mr. Farnan: The delegation yesterday summed up its response to this legislation. That was the Metropolitan Toronto Police, the Metropolitan Board of Commissioners of Police and the municipality of Metropolitan Toronto. They had three areas of concern. First, they said this legislation was a breach of trust and understanding. Second, they said the bill was contrary to the democratic values of our society, of keeping law enforcement separate from the administration of justice, and impaired the impartiality of justice. Third, they said it would divert resources from other important areas of police work. Would you concur with the general perceptions of that delegation?

Chairman Seiling: Unless regional council is prepared to bite the



bullet and spend another \$1 million, yes, it will reduce the manpower for general policing. There is no question about that.

I think the other part I find a little problematic, from my point of view, is that I find it strange that the government would choose to introduce this as legislation, rather than table either a green paper or a discussion paper and go out into the community, and force the debate into partisan lines before there has ever been any discussion out in the community. I come here and I watch the interplay and the exchange and I know the responses to the questions are based, to a certain extent, on party lines.

Mr. Chairman: No, whatever gave you that impression?

Chairman Seiling: I guess my sense is, and it reflects my concern with the approach of the government these days, why did it not table a discussion paper and discuss the whole issue with the municipalities and all those people involved rather than introducing legislation that forces everybody into partisan corners so now we cannot have a fair discussion on it?

Mr. Farnan: Let me just pick up on that point. A member of one of the delegations earlier this morning stopped me in the corridor just after he had finished his presentation and said: "Do you think we're wasting our time? Do you think the government is listening?" It is probably an unfair question to some extent, and I do not want to put you on the line, but the potential for that kind of thinking is out there, given the experience of Sunday shopping, given the experience of the failure to have consultation and the failure to have a discussion paper. Is it a concern of yours that it may be a fait accompli?

Chairman Seiling: I would like to be optimistic and hope that people are reasonable, that if the bill is flawed, reasonable people will see it as such and deal with it accordingly.

Mr. Farnan: You hope the government will listen to the delegations?

Chairman Seiling: Hopefully. It would not be the first time a bill died in the Orders and Notices or re-emerged in another form. I hesitate to get drawn into the partisan arguments.

Mr. Farnan: I do not mean that. But simply, like any delegation coming and presenting its viewpoint—and every delegation to date has been saying, "We would like this bill held up and taken back to the drawing table." I think it would be fair to say, and this is not a partisan viewpoint, that delegations hope the government will listen. Would you agree with that?

Chairman Seiling: Oh, I agree with that.

Mr. Kanter: I am trying to find out what happens in Waterloo right now and I have three questions that are quite specific about current practice.

Chairman Seiling: I hope I can answer them.

Mr. Kanter: I hope so; I think you can. First, who is actually physically providing court security in the region of Waterloo right now? Who is doing it?

Chairman Seiling: There are some sheriffs, retired people, who walk the halls generally, but specific court security and transfer of prisoners are provided by the regional police force.

Mr. Kanter: So the security in the courtroom right now in the region of Waterloo is provided by the Waterloo Regional Police?

Chairman Seiling: As I understand it, yes, but not in every court.

Mr. Kanter: Taking your statement then generally, security is provided in courtrooms by the Waterloo Police Force?

Chairman Seiling: As I understand it, any kind of specialized security, over and above what is provided by the commissionaires or whatever you call them, is provided by the police force, yes.

Mr. Kanter: My second question is, who is paying for that service right now?

Chairman Seiling: The region is.

Mr. Kanter: So the regional police are providing it and the region of Waterloo is paying for it right now?

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Chairman Seiling: The cost sheet I gave you shows there is a recovery. The province does provide some recovery for prisoner transfer, which is \$100,000.

Mr. Kanter: Okay. You made a statement on page 3 of your brief that you "believe that if enacted, the legislation...would require an expenditure"—I think I have to ask a preliminary question first. How much is the region of Waterloo paying for court security services right now?

Chairman Seiling: It is in the summary that I gave to you.

Mr. Kanter: Well, can you just —

Chairman Seiling: It is \$808,221.

Mr. Kanter: Okay, you are currently paying \$808,221. That seems to be a little different from \$708,000; maybe that is just a typo there. Let's assume you are now paying \$808,221. Going back to page 3 of your brief, you have suggested "that if enacted, the legislation would require an expenditure in excess of \$1 million."

Chairman Seiling: Yes.

Mr. Kanter: I assume that is about \$200,000 more than at current. Can you tell me what that assumption is based on? On what are you basing the assumption that your costs would somehow increase from the current \$808,000 you are spending to a couple of hundred thousand more? Why do you assume there will be such an increase?

Chairman Seiling: Okay. The report is attached. I have attached it to the material. The deputy chief's report, showing how he did the calculation, is attached. But as I understand it, if you look under existing costs, the difference between \$808,000 and \$708,000 is that we received the recoverable of \$100,000. Our net cost is \$330,000. The deputy chief has taken the legislation, taken the courts that exist in the region of Waterloo which would require court security, assigned manpower to them and come up with a

figure—without going back, I think it is about 21 officers; his calculations are in the material I have supplied to you—that would represent an additional \$1,072,614.

Mr. Kanter: Sorry, I do not understand. The reason I do not understand is as follows: Your regional police force is now providing the service and your regional municipality is now paying for the service. I do not understand, if under Bill 187 your region continues to pay for the service and your men continue to provide it, why there would be an increase in costs, unless—

Chairman Seiling: Because they are not providing full service.

Mr. Kanter: What additional services would you have to provide if Bill 187 were enacted?

Chairman Seiling: We are not providing security for all the courts. If we had to provide security for all the courts listed in the back here—we do not provide it for all these courts—as the legislation has been interpreted by the police force, it would require additional manpower to cover all the courts.

Mr. Kanter: Can you tell me, in terms of the information prepared by your police department, is it assuming that the additional manpower provided would have to be provided by first-class, sworn police constables?

Chairman Seiling: We provided two forms for you: one is using first-class constables and the other is using civilians.

Mr. Kanter: I am sorry I did not have a chance to hear your entire presentation and I have not had a chance to pursue all the documentation that you have provided. I am trying to get kind of a summary picture as I sit here.

It is my understanding that in the region of Waterloo, as in most although not all of the municipalities of the province, in your municipality the practice for a very long period of time has been to have the local municipality provide the services and pay for the services. I am not at all clear why there would be any significant increase in costs, unless you are assuming you would go from some sort of court constable to a first-class constable.

If the bill is understood, interpreted or, if necessary, amended to read that your police department can provide security through a range of people—through constables most of time, perhaps through regular police constables in some exceptional cases—it would appear to me that nothing would change, that the men you are providing would stay the same, the services you are providing would stay the same and the cost would stay the same. Why is that not correct?

Chairman Seiling: I am sorry if I am being obtuse, but my understanding is that we are providing minimal court security service. The bill requires full court security service for all courts and requires it up to a certain standard. We have priced it on the basis of full security, not the partial security we are doing right now.

Mr. Kanter: With great respect, I do not believe that is correct in the bill. In fact, we have been criticized for not providing a standard.

Mr. Chairman: I am sorry, Mr. Kanter, your time has expired. Maybe we could have that cleared up by the parliamentary assistant, because I think—



Mr. Kanter: I think it is a very important point. I would be delighted if someone could clear it up.

Chairman Seiling: I also want to say that the region of Waterloo has done this under protest for many years. This is not something we have done willingly; this is something we have complained and argued about for years and years.

Mr. Kanter: I appreciate that you may not be happy with the status quo. I just want to make the point that this bill will not change the status quo.

Chairman Seiling: I am sorry, but it will as we understand it, and every other police force in Ontario seems to be taking the same interpretation as we are.

Mr. Chairman: I think we will ask the parliamentary assistant, because it is important that we are clear on that issue.

Mr. Offer: I have closely followed the questioning and I must say that I would like to indicate that I believe that Mr. Kanter's interpretation is not—

Mr. Farnan: Surprise, surprise.

Mr. Offer: Mr. Farnan says, "Surprise, surprise." I hope Hansard picked it up.

The question is, what does the legislation actually say and what does the legislation actually do? This legislation says that the decision as to how a courthouse is to be secured is the responsibility of the municipal police force. It is the responsibility, in clear fashion, that the municipal police force assesses what is necessary in terms of securing a courthouse. This legislation does not propose to tell the police how that courthouse is to be secured. That decision rests with the police. The assessment of what is necessary is that of the police.

It may very well be that, taking into consideration your particular situation, the degree of security now being given by your force to your courthouses will be and is sufficient, in accordance with the decision of the police, and this legislation will have absolutely no impact on your region.

Chairman Seiling: May I respond to that? You are making the assumption then that this is a fait accompli, that the transfer of responsibility from the province to the municipalities is legitimate?

Mr. Offer: With respect to my response, I was responding to what this legislation, what this bill before this committee now says. I am not saying whether it is a fait accompli or not; I am just responding as to what is the meaning and intention of this bill before this committee.

Chairman Seiling: That raises another question.

Mr. Chairman: I am sorry—

Mr. Hampton: Now that we have heard this opinion from on high, I think we should at least be allowed to ask a question on that.

Mr. Chairman: I was not talking to the chairman. You had your hand

up. That is why I said, "I am sorry." Go ahead, Mr. Seiling. You can respond to that, if you want.

Chairman Seiling: If in fact it is the determination of the municipality as to what the standard is, then why has the province forced us to upgrade courthouses, for example, for security purposes? Why have the municipalities not been allowed to determine what is an adequate level of security for court buildings, for example? We have had to undertake renovations. Many municipalities have been faced with that.

I guess the question is, who determines that? Is it really the municipality, if I follow your line of argument, or is it the judge who sits locally? If the judge says, "I want a guard when I arrive there," can the municipality say to him, "No, you're not getting a police officer when your car arrives"?

Mr. Runciman: You are talking about the real world; they have trouble with that.

Mr. Offer: I think the chairman has raised an important question. It is the police force that will have that responsibility. They are best able and best equipped. They have the best understanding as to what is coming into the courthouses. They know what is coming in on a daily, if not hourly, basis. They know what is a potential risk or what is not a potential risk. This bill says it is those people who have that particular knowledge and expertise who really should be making the decision.

Mr. Chairman: Thank you very much.

Mr. Polsinelli: Before Chairman Seiling leaves, could I ask one quick question?

Mr. Chairman: Not without unanimous consent, Mr. Polsinelli. Is it agreed, unanimous consent?

Mr. Hampton: I agree if I get one question as well.

Mr. Chairman: Mr. Polsinelli, you have heard the comments of the other members. If we open it up again, we have a gentleman here from North Bay who has been waiting patiently—

Mr. Polsinelli: I appreciate that and I won't ask Mr. Seiling about his police budget for 1988.

Mr. Chairman: We are already an hour and a half behind. We will now hear from the next deputant, the vice-chairman of the North Bay Police Commission, Stan Lawlor.

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#### NORTH BAY POLICE COMMISSION

Mr. Lawlor: Thank you. I have had a chance to sit in on two of the previous presentations. I appreciate the opportunity to make the presentation today, I suppose with regard to two jurisdictions, as mayor of the city but also as vice-chairman of the police commission, in that the chairman, Mr. Valin, regrets that he could not be here today.

With the proposal for Bill 187, the taxpayers of North Bay will be

saddled with the responsibility of covering protection when police forces from Sturgeon Falls and Mattawa, military police, the Ontario Provincial Police, the RCMP, the Ministry of Natural Resources conservation officers and, believe it or not, the three railway police bring people into our courtrooms, and all of them do bring people into our courtrooms.

At the present time, the North Bay Police Force only has officers in attendance when we have prisoners in attendance. When we do not have prisoners in attendance, we simply have our court officers doing their regular duty. I might also mention that the costs of even that get rather expensive because we have call-in when court officers are required on duty when it is their normal time off.

I want to emphasize that this is protection for prisoners. When I say protection for prisoners, I mean our only job is to guard prisoners when we have prisoners in attendance. The cost of that protection right now is \$59,000 a year. We have a population with 19,000 households, so the increase of \$3 that was given several years ago was about that amount.

However, and I want to emphasize this, we have no detention facility suitable for juveniles in North Bay, so at this time we have to bring juveniles to Sudbury. The cost of that, when we were using sworn officers, was in the range of \$57,000 as well, so now you have two activities eating up the same \$57,000 to \$59,000. We have reduced that somewhat by using nonsworn personnel and we have brought it down to about \$29,000 over the past six months.

Now, with Bill 187 it is our understanding—and I realize that, of course, it has not gone for a final reading by any means yet—that we will be providing security for prisoners at all times, for the facilities, for the judges, for the employees, for the sheriffs, for the lawyers, for the witnesses and for the visitors.

At this point, of course, we would like to pose the following point. The judges are appointed by the province or the federal government and paid by the province or the federal government: How does the municipality get saddled with the responsibility then of providing security when this is a provincial institution or—

Mr. Chairman: I am sure when it comes to question period, we will get the answer to that, in perhaps three different ways or two different ways, anyway.

Mr. Lawlor: Yes, I appreciate that. I really realize that some of these things are issues of fools walking in where angels fear to tread, but anyway, this is our feeling.

Mr. Chairman: I have to apologize for all those you have just maligned.

Mr. Lawlor: Pardon?

Mr. Chairman: Never mind.

Mr. Lawlor: Okay.

Mr. Kanter: Who's in what category?

Mr. Lawlor: In 1988, we had 254 young offenders who were processed,



and that necessitated 149 trips to the Cecil Facer Youth Centre. I think you can realize, of course, we have been arguing over the years that there should be an institute in North Bay, which would reduce our costs. Regrettably, one still does not exist.

We get police officers, and now some of the nonsworn personnel, leaving North Bay at two or three in the morning, depending on the weather, to go to Sudbury to pick up young offenders to bring them to court so they can get them back to Sudbury again before nightfall, because that is the only place they are allowed to sleep when they are in custody. When they are not in custody, of course, where they sleep or where they stay does not seem to be an important issue.

It is our feeling that what we are ending up with here is a situation where we have no way to deal with the increased cost. By the way, the increased cost, as we estimate it, would involve 12 sworn officers, if it were done with sworn officers, at a cost of \$561,000. We have done an intensive study of this in conjunction with the judges and the court officers, including the sheriff. Using option 2, it would be five sworn officers, four special constables and six part-time special constables for a total cost of \$453,000.

Of course, neither one of these is a very attractive alternative and in either case that would be close to 10 per cent of our entire police budget at the present time.

The police chief has pointed out that the only areas, as my predecessors here today have indicated—the two, at least—would be areas such as Reduce Impaired Driving Everywhere, drug enforcement—and right now, crack has become a very special problem in our municipality; the problems of crack are being felt in the early stages, and we feel that even with the existing police force we just simply do not have the personnel to deal with that particular problem—school liaison, criminal investigation, patrol, multiculturalism, which is becoming such an important one, and, of course, training.

We have a new courthouse in North Bay that is not open yet; it is supposed to open in May or June. It has seven courtrooms. Our old courthouse, which was 110 years old, was a relatively small building, as I am sure Mr. Sterling is aware.

Mr. Chairman: Was he there in a professional capacity?

Mr. Lawlor: I believe he visited there. I am sure he did.

Mr. Sterling: When I was the Provincial Secretary for Justice, I was in the basement of it.

Mr. Lawlor: I believe I visited there with you. He was there in good stead, I assure you. At any rate, it is a problem of some concern for us, because it is quite a gigantic building.

I would like to quote Zuber's Report of the Ontario Courts Inquiry very briefly if I may. On page 286, it had a comment on court security which I am sure some of you are aware of. It says as follows: "The provision of court security should be the responsibility of a provincial police force operating at the direction of the courts administration division of the Ministry of the Attorney General. To the extent that use of municipal police forces is considered desirable, appropriate arrangements should be made with the municipal authorities involved and adequate funding should be provided for that purpose."

This is not specifically from the Zuber report; it is an outcome of that. It then goes on to indicate: "Security within the courthouse is of utmost importance. But of course it is the responsibility of the province; and the responsibility of the police to escort prisoners to and from detention centres is spelled out in section 205 of the Municipal Act. Sections 91 and 94 of the Courts of Justice Act, 1984, clearly provide that the Attorney General will supply such other employees as are considered necessary for the administration of the courts in Ontario."

About three years ago, at a session of the Association of Municipalities of Ontario—where I know Mr. Faubert was in attendance at that time—the Honourable Bernard Grandmaître made a presentation to us. Mr. Grandmaître assured us, when we raised concerns at that time about a reduction in grants to municipalities in the early years of the Liberal administration, that we would not get any more surprises and that we would get plenty of notice of any changes that would occur, so that we could make proper arrangements in our budgeting process within the municipality.

Frank, you were in attendance at that one; I know that. Frank is an old friend of mine, by the way.

Mr. Sterling: What is a friend, anyway?

Mr. Lawlor: I would just like to reflect on some points for you at this time. I know it is repetitious, but for my presentation to be complete it is important that I do so.

In a number of areas in which we have had so many surprises over the past couple of years, the first one is the freezing of unconditional grants.

In northern Ontario, 21 per cent of the revenue of northern municipalities comes from unconditional grants. With the surprise notification that there will be no increase in unconditional grants this year, it has an impact in North Bay alone in excess of \$500,000 in our budget. Again, I emphasize that in a budget the size of ours, with a police force of 88 members and a population of 52,000, these kinds of things are of great significance to us.

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There has been a reduction in grants to the conservation authorities. This is going to double municipal costs. We appreciate the job that the conservation authorities have done, but an expectation level comes to be developed as a result of the services that are provided, and when this is suddenly legislated as a municipal responsibility, it unloads a tremendous burden of responsibility on the municipal taxpayer. Of course, as it has been indicated, our only source of taxation to any extent is the property-based tax.

There has been a minimum increase in the maintenance for roads allocated this year, and that increase has been taken up entirely by inflation, the new taxes on gasoline, the asphalt paving increase in taxes and the concrete-product taxes. Here again, we are finding that the infrastructure is being eroded substantially. While I realize that there are federal and provincial aspects to this, and maybe I am dumping into another one of those caverns that you were speaking of earlier, you realize that in Edmonton recently these matters were addressed in that area.

Recently, there were tremendous renovations necessary at Casselholme,

the senior citizens' home in the city of North Bay. The average age of admission to Casselholme now is 82. It has become a chronic care facility, rather than just an old age home. Suddenly, there were \$6 million worth of renovations, the year before last, that were absolutely and totally necessary to bring it up to date. The municipalities were responsible for half of those costs. For us, it involved our share of it: \$2,622,000. It ate up, over the past two years, one third of our capital allocations for the entire city, just the improvements to Casselholme.

I realize that this is not the problem of this particular committee, but I am making you aware of the problems these surprises cause us.

Of course, the lot levies for education are a new matter now. We have relatively small lot levies, but the erosion of this and the allocation of it to education spell another problem in terms of potential areas for income for the cities.

Of course, now we have Bill 187. Until November of last year, we had no notion that it might even be. Now we are in the middle of a tax year and we still do not know yet whether this is going to occur.

Our police budget is completed for this year. It has been submitted to the municipality, and this has not been included in it. Simply, it could not be included in it up to this time because we have been advised that it is still under study in this committee before it goes back to the Legislature, and for that reason, substantial problems are raised for the budgeting process of municipalities, which, as you know, runs from January 1 to December 31.

We are not permitted to budget for deficits, as I am sure you are well aware. Certainly it is not our desire to run deficits, and I might emphasize that we have not run a deficit in the past 10 years.

I would like to comment, if I may, on the matter of the decision of the municipality as to how the courthouse should be secured. We had a chance to discuss this with the judge, the sheriff and some other people. While we realize that the legislation indicates that it is the responsibility of the police force to do so, we would also hasten to emphasize that when the level of security is judged to be inadequate, after an injury or a death occurs, it is also the liability of the police force or the municipality to deal with what the fallout is in that particular area. In that regard, of course, we feel there are some special problems as well.

Those are really the major matters that I would like to deal with at the present time. Both the municipality and the police commission have had motions, presented and passed unanimously, opposing the manner in which this has been done and opposing the actual situation whereby areas of provincial responsibility are again passed on to municipalities and police commissions.

Mr. Chairman: Thank you, Mr. Lawlor. There are 15 minutes left: five minutes for each caucus.

Mr. Faubert: Nice to see you, Stan. By the way, I notice they did not have you down as mayor.

Mr. Lawlor: I did not see your name on the committee list, either.

Mr. Faubert: No, I am ---



Mr. Lawlor: I have a list of all those members and I did not see your name.

Mr. Faubert: No, I am self-appointed. Okay.

You say you are going to open a new courthouse facility?

Mr. Lawlor: Yes.

Mr. Faubert: How did you determine how you are going to secure that new courthouse? What was the process you went through?

Mr. Lawlor: In consultation with the judge and the sheriff.

Mr. Faubert: And you have costed that?

Mr. Lawlor: Yes.

Mr. Faubert: That is the cost that you gave us originally?

Mr. Lawlor: Yes. With sworn personnel, \$550,000, roughly; and with a mixture of the two, \$450,000.

Mr. Faubert: Sworn personnel plus civilian security?

Mr. Lawlor: Yes, which compares with the \$59,000 that we spend now to secure our prisoners, and I emphasize, only the prisoners of the North Bay municipal police force. We are not responsible for the court when we do not have prisoners there and we are not responsible for the prisoners of all those other police forces that I mentioned to you.

Mr. Faubert: How does this differ from your projected costs as you interpret Bill 187? You have additional costs.

Mr. Lawlor: We were hoping, of course, that we would continue to have the same number of prisoners in the future as we have now, so it would have been about \$59,000.

Mr. Faubert: So there is no change. Okay.

Mr. Lawlor: But now it is going to be \$450,000, even with the class 2 coverage, with using the nonsworn personnel.

Mr. Faubert: Just one last comment. I am glad you raised the municipal budgeting process, because that is an important aspect. If you impose it now, how then do you pay for it?

Mr. Lawlor: Exactly.

Mrs. LeBourdais: I am just wondering, in the planning of the new courthouse, since you have that luxury, have there been any specific architectural features built into it to account for security?

Mr. Lawlor: Many. I can tell you I toured the new courthouse with the architect during the construction period. There are security halls built into it, there are security staircases, the access to the courtrooms is very, very well done, and I would say that if the cost is only going to be \$450,000—and that sounds like I am supporting it, but I am not—it is attributable to the design features that have been built into it.

Mrs. LeBourdais: Has there been a significant number of incidents in perhaps the past four to five years that would indicate an increase in security problems that would warrant any of this?

Mr. Lawlor: No. Absolutely not. We have had no such cases. As a matter of fact, in the past, when we have had some very serious cases being heard—and I am sure some of you are familiar with the Donald Kelly case, which was one, and the Mancini case, which was another—in both cases the people who were hired were, I would say, virtually friends of the sheriff. They were just hired off the street to check people as they were going in and out. One of them ended up in jail himself for a year or so, by the way, a year ago.

Mrs. LeBourdais: I am just wondering whether in many cases we are reacting to the sign of the times that exists in certain areas of either this country or North America rather than to what is actually existing within our own community.

Mr. Lawlor: I have no question about that. I think the requirements that may be implied—and I emphasize "implied"—in Bill 187 are far beyond anything we have had in the past. As a matter of fact, in our case, a judge indicated that he certainly did not feel the level of security that might be available to him should he request it was necessary.

Mrs. LeBourdais: I really had wanted to ask this of the previous deputant, because a number have mentioned it. I do not know if you specifically zeroed in on it, but it is suggested that if this legislation goes through, if a judge suggested that there was not adequate security, he could make that known and perhaps thereby insist that a first-class constable be brought in, with all the specific training. What happens now if a judge says he is not satisfied with the level of security?

Mr. Lawlor: Right now we have no responsibility for the security of the facilities or the personnel except for the prisoner in the courtroom. Under the proposal, we have a problem, because we have policemen or nonsworn personnel, either, who are being paid for by the municipal force and who we feel will be acting under the direction and the instruction of either the judge or the sheriff. It is going to be a problem, because technically, if we are paying them, we should have control, but I am sure you are all well aware of the possessiveness and the ownership that a judge has over his courtroom and what goes on in it.

1640

Mrs. LeBourdais: So at this point, if there is any incident that breaks out, your sole responsibility is to protect the prisoner, not the judge, the lawyers or anyone else in the courtroom.

Mr. Lawlor: That is correct. But as the previous gentleman said, if we were called upon to maintain order, we would certainly do so. When we have people who are risks in the courtroom, we do take precautionary measures to ensure security, extreme ones when necessary.

I particularly mentioned Kelly there, by the way, who is still in Kingston. It was a big case in North Bay. He had been loose for about 100 days and could not be found. It was a dual murder, by the way, so I am just mentioning that as an indication.

Mr. Runciman: You may have answered this in response to Mrs. LeBourdais while I was in conversation with my colleague. You mentioned that in your view the government is reacting to a nonproblem, certainly as far as North Bay is concerned. The witnesses we have had before us today have confirmed that in their areas as well; they have not had any problems in criminal court. If they have had some problems, they have been in family court. The judge in North Bay whom you consulted in terms of trying to develop a program, does he share that view as well?

Mr. Lawlor: Yes. I can tell you something else that I am sure some of the people who have been involved with either police commissions or police departments will tell you: When policemen respond to cases, their biggest problems are in responding to domestic disputes. The greatest likelihood of getting injured is in a domestic dispute, not in what you might call a crime of murder or something of that nature. So it is the emotion that seems to occur in such situations, which of course will be in family court, especially when children and custody are involved.

Mr. Runciman: I agree with you completely.

You quoted from Mr. Justice Zuber. He concluded that there was a security concern, I gather.

Mr. Lawlor: Yes, he did. I was only quoting from him—and I grant you, it was convenient—because he assigned responsibility to the province to maintain security in the courts.

Mr. Runciman: I have not reviewed that report, so I am not sure how he came to conclude that. I am assuming there must have been some problems occurring within the criminal court system in the last 15 or 20 years in the province. If there were not, I have difficulty in understanding how he concluded there was a security risk. Who is providing the court security? Is it the sheriff's office that is doing this essentially?

Mr. Lawlor: Yes. When he perceived there was a need, the sheriff would literally hire somebody, sometimes to check people who were coming into the court as spectators, if you want to use that term—what do you call them?

Mr. Chairman: It depends on whether they are involved in the proceedings.

Mr. Lawlor: I am speaking of the spectators now, because we have very little concern with prisoners.

Mr. Chairman: They do not have to be prisoners. They could be loose in the courtroom—people being brought in, spectators.

Mr. Lawlor: Yes, and witnesses too, of course.

Mr. Chairman: I am sorry. If I do not open my mouth every now and then, it goes to sleep.

Mr. Runciman: Do you have any idea what it is costing the sheriff?

Mr. Lawlor: Not much. These are civilians, by the way, that he is hiring.

Mr. Runciman: Other than the witness we had here before us today,



everyone has indicated that the security being provided by the sheriff in Ottawa, Bruce Hamilton, is quite adequate, at a cost of about \$400,000 versus the \$1.5 million they are talking about to adopt the Bill 187 system. You are saying it is very modest in North Bay versus what you are suggesting could be close to \$500,000 for North Bay to assume those responsibilities.

Mr. Lawlor: That is right.

Mr. Kanter: I believe that was because of the new courthouse, not because of the bill.

Mr. Lawlor: We have seven courtrooms in the new courthouse. Our problem is that we are required, in the interpretation we have made of it, to provide court security from eight to five every day in those courtrooms.

Mr. Runciman: I think what the witness suggests is that the new courthouse is actually reducing security costs because of some of the innovations in the building.

Mr. Lawlor: There is no question at all in my mind about that. When a prisoner comes into the garage and is taken out of that car, he does not run into a stairwell or a hall that will meet a judge, a witness or anybody else until he is on the docket. He is in the protection of the police and that person does not have any contact of any nature until he gets before the judge. The judge in turn, when he comes in, goes straight to his chambers, and another hallway is available for him to end up right in the courtroom, through another door, and there is no contact at all. I do not see the problem.

Mr. Runciman: So in essence Bill 187 seems to be addressing a nonproblem which is currently being adequately looked after at a significantly lower cost than the municipality will now have to assume?

Mr. Lawlor: Yes.

Mr. Runciman: The province not only will be saving the costs that are currently expended through the sheriff's office but will be able, through the back door, to get at sheriffs' appointees who were appointed by the previous government. That was one of the major reasons behind this legislation.

Mr. Chairman: Thank you very much. We appreciate your coming all the way here from North Bay and bringing your information to us.

#### ORGANIZATION

Mr. Chairman: We have one matter before we adjourn. Tomorrow morning, we have two deputations, one at 10 and one at 10:30. We are scheduled to do clause-by-clause at two o'clock in the afternoon. There was some indication that you did not want to do clause-by-clause until you had had your trip to the old city hall, but that seems to be counterproductive. We may as well—

Mr. Hampton: I have one question. I believe it was the first presenter yesterday, Judge Allen, who asked a number of questions as to guidelines, training and so on.

Mr. Chairman: I think the parliamentary assistant indicated that answers would be given to those.

Mr. Hampton: I would like answers to those before we---

Mr. Chairman: Before we go to the city hall?

Mr. Hampton: Perhaps before we go to the city hall too, but certainly before we engage in clause-by-clause.

Mr. Offer: I will just indicate that we did undertake to provide a response to that and we expect that response will be ready tomorrow. We are trying to get all of that information together.

Mr. Chairman: Now, what is the wish of committee with reference to the two o'clock sitting for clause-by-clause?

Mr. Sterling: Tomorrow? I think we should wait until Thursday afternoon.

Mr. Chairman: Is there unanimous consent then that we not sit beyond the two delegations tomorrow and that we postpone—

Mr. Hampton: Unless we have other delegations that want to appear.

Clerk of the Committee: As a matter of fact, the 10:30 delegation was just scheduled today.

Mr. Chairman: It is an add-on. So we will postpone clause-by-clause until two o'clock on Thursday.

Mr. Polsinelli: No chance of touring the courthouse tomorrow afternoon?

Mr. Chairman: They seemed to think that the morning was the best time. I want everybody to pack a lunch too.

Clerk of the Committee: Committee members should also note that on the agenda for Thursday, March 9, it says that we should meet in the main lobby of this building at 8:30 a.m. I have cabs ready to transport everybody down there.

Mr. Chairman: We had unanimous consent then that this is what we will do, so we are adjourned then until 10 o'clock tomorrow morning.

The committee adjourned at 4:47 p.m.

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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE  
POLICE AND SHERIFFS STATUTE LAW AMENDMENT ACT  
WEDNESDAY, MARCH 8, 1989





STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitution:

Faubert, Frank (Scarborough-Ellesmere L) for Mr. Chiarelli

Clerk: Deller, Deborah

Witnesses:

From the Ministry of the Attorney General:

Offer, Steven, Parliamentary Assistant to the Attorney General (Mississauga North L)

Peebles, D. Ross, Assistant Deputy Attorney General, Courts Administration

Veskimets, Matt M., Director, Provincial Court Services Branch

From the City of Sault Ste. Marie:

Fratesi, Joseph M., Mayor

Bottos, Lorie, City Solicitor

Individual Presentation:

Batchelor, Dahn, Criminologist

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Wednesday, March 8, 1989

The committee met at 10:16 a.m. in room 228.

POLICE AND SHERIFFS STATUTE LAW AMENDMENT ACT  
(continued)

Consideration of Bill 187, An Act to amend certain Acts as they relate to Police and Sheriffs.

Mr. Chairman: I recognize a quorum.

Mr. Mahoney: Oh, you are here now.

Mr. Chairman: I apologize for my delay. I was just trying to get even with the committee.

We have a written brief, and you also have before you some information provided by the ministry with regard to Bill 187.

The first deputation this morning is the city of Sault Ste. Marie: Mayor Joseph Fratesi and Lorie Bottos, city solicitor. Gentlemen, please come forward. If you would like to identify yourself for the purposes of Hansard and then proceed, you have half an hour and you can use all of that time if you like. If there is any time left over we will divide it equally among the three caucuses for questions.

Mr. Kanter: Just before the deputation begins, did you say we had information filed by the ministry before us or is it coming?

Mr. Chairman: It is coming. It was precipitous of me to say it was before you.

Mr. Offer: As an addition, I think Mr. Sterling brought forward the six responses to the questions posed by the delegation on Monday.

CITY OF SAULT STE. MARIE

Mr. Bottos: I will start off. My name is Lorie Bottos. I am the city solicitor for Sault Ste. Marie. I will make a presentation and then Mayor Fratesi will make some comments.

First of all, I would like to thank the committee very much for the opportunity to speak on a bill that has important ramifications for the cities. The city of Sault Ste. Marie has many concerns about the proposed amendments. Obviously, the first one is that of costs.

The estimate in Sault Ste. Marie is that the impact of this bill will be approximately \$450,000 per year in additional policing costs. At the present time, the Sault Ste. Marie Police Force has a request for additional police officers just to deal with their regular duties, and this would be on top of that, so it is not a situation where they can just transfer officers from one area into the courthouse security. They just do not have the extra staff to do that and the \$450,000 is something that Sault Ste. Marie can ill afford.

Another aspect that makes Sault Ste. Marie a little different from other cities is that we are a border city, directly opposite Sault Ste. Marie, Michigan, so there are different demands on our police force than there are on police departments in some other Ontario municipalities. It has great demands put on it with respect to drug enforcement and surveillance, and in forming a joint force with the Ontario Provincial Police and the RCMP. It really does not have the resources to devote to courthouse security.

#### 1020

One other point pertains to Sault Ste. Marie being the seat for district court and Supreme Court sittings. We have a situation where people charged in Wawa or outlying areas are brought to Sault Ste. Marie for trial. It would be a situation where our police force has to provide security for these accused from other areas. The bill makes no provision for compensation to the municipality for those types of prisoners.

No, we are not in favour of the bill at all. We think if it is going to go through there should be some amendments to address that type of situation, in which I am sure a few other cities find themselves as well, cities such as North Bay and Sudbury.

The Attorney General (Mr. Scott) stated that in 1985 that the cities received \$3 per household specifically to help municipalities to provide court security. In Sault Ste. Marie this would amount to approximately \$75,000, which represents approximately 15 per cent to 20 per cent of our estimated cost of providing that security. We just do not think it is enough for this city to receive.

Another point pertains to the drafting of the legislation. The Attorney General has stated that nothing will impinge on the discretion of the police chief or the board of commissioners of police as to how they provide that security, but I do not think that is the way the legislation reads. I think the legislation talks about the responsibility to ensure the security of judges, the security of the premises and the security of persons in custody. I think there should be a provision in the legislation to the effect that it is in the absolute discretion of the police chief or the board of commissioners of police as to how that security is provided. Otherwise, they are going to be second-guessed, if an incident occurs, as to what adequate security involves. The legislation just leaves it open-ended as to what is going to be provided in terms of security, exactly what the standard is going to be; whether it is one officer per courtroom, two officers—whatever.

One other issue that I guess is peculiar to Sault Ste. Marie but may also pertain to some other cities is that our courthouse facilities are spread between two buildings, so we would require additional staff to cover those two buildings. All in all it is going to be an unreasonable burden on the city to have to have officers devoted to this when they could be out on more worthwhile endeavours. Perhaps now I will turn it over to Mayor Fratesi to offer some comments.

No doubt cost is the major reason put to this committee for the overwhelming opposition from municipalities and municipal police agencies with respect to this bill. I would like to point out that this is only one of all too many initiatives by the provincial government in the past year or so which have seriously impacted on our municipal budget, as I am sure it has for other communities in circumstances similar to our own.



We in Sault Ste. Marie are right in the middle of our 1989 budget sessions, and it has become much too difficult for us to sit still when, first, we hear from the Treasurer (Mr. R. F. Nixon) and the Minister of Municipal Affairs (Mr. Eakins) that there will be no increases to municipalities in unconditional grants; and second, we take a tally of those initiatives that the province has over the last year imparted to the municipal government to absorb as municipal responsibilities and to become part of the municipal budget.

Such things include revisions to the Gasoline Tax Act and the Sales Tax Act; the shelter assistance increases in 1988; pay equity and the financial implications of municipal involvement; workplace hazardous materials information system legislation; the training and computerization requirements that municipalities are now into; a labour relations board decision that is peculiar to Sault Ste. Marie and requires us to deal only with unionized contractors doing municipal work; increased eligibility for the disabled in the areas of providing transportation; requirements to satisfy gasoline storage legislation; such things as being obliged to dispose of winter sand in a way previously unheard of, again at greatly increased cost; environmental policies put by the provincial government; new municipal-industrial strategy for abatement legislation requirements that obviously have cost to our municipality in hiring new staff to implement and to monitor; fire turnout gear for our firefighters; air brake certification; and the list goes on and on and on with respect to obligations that either through legislation or through policy have come down to municipalities and which very directly impact on our municipal budgeting.

When added to the announcement that there will be no increase in provincial grants to municipalities, it leaves us in a difficult spot.

The bill which this committee is considering is likely the straw which will break the camel's back, certainly in our circumstances, because in addition to the new requirements that the province has imposed, up north in Sault Ste. Marie in the last year we faced extreme winter conditions, which add extra costs to us without extra subsidy from the province in most circumstances. And of course we suffer, as does any community, inflationary impacts on materials and supplies. Added to that, naturally, you have the wage increases that everyone expects and is entitled to on an annual basis.

Sault Ste. Marie, like other cities in northern Ontario, does not have assessments growing in leaps and bounds as do southern Ontario communities. I am sure all members of this committee are only too familiar with the fact that in the period from 1983 to 1986 assessments were actually reversed and sat static in northern Ontario. It was only in 1987 and continuing in 1988 that we have been starting to see some growth and improvement, and a two per cent growth in assessment is something that we see as very positive in 1988.

We are recovering from serious problems over a long period and are just getting on our feet. The province has helped us immensely with northern relocation programs in the last several years, but we will likely never enjoy the growth that this part of the province now enjoys.

My concerns about the impact of recent provincial legislation and announcements were addressed in a letter to the Hon. John Eakins, and a copy was sent to the Premier (Mr. Peterson).

On January 6 I wrote to the Attorney General expressing my serious concerns about Bill 187, which had received two readings. In the letter I

described how our police department already had requested a significant increase to hire 13 badly needed additional officers just to deal with patrols and the front desk, court scheduling, drug enforcement, the youth bureau and crime prevention. This does not include any extra help such as Bill 187 would call for.

Probably all of the additions requested by the police commission will be denied by city council because of the grim financial circumstances in which we already find ourselves, partially because of those measures that I have already described as being imposed on us by the provincial government.

The Minister of Municipal Affairs answered my letter and pointed out that overall unconditional grants will increase by 5.4 per cent, but that will not respond to Sault Ste. Marie's needs because it responds to what the minister describes as urgent provincial priorities. Those areas that the minister refers to are increases that likely will come to Sault Ste. Marie as conditional grants, but obviously that will not assist us in our regular and day-to-day obligations as a municipality.

When I was first elected mayor of Sault Ste. Marie three and a half years ago, I led a delegation to see the Treasurer and the then Minister of Municipal Affairs to protest a 2.6 per cent increase in the amount of grants that were coming to the city of Sault Ste. Marie. Now we hear from the Treasurer and the minister that there will be no increase and the situation is even more difficult. We are faced with no increase in grants and we are faced with enormous additional responsibilities passed over to us by the province, and there is seemingly little understanding when we make our protest.

The Attorney General recently responded to my protest. He noted my general comments about the lack of increases in provincial grants and indicated in his letter he would forward my comment to the Minister of Municipal Affairs, who had already replied to me offering little hope of assistance.

All of this is little consolation when we discuss Sault Ste. Marie in the context of Bill 187. The administration of justice is a provincial responsibility; it always has been. The courthouses, the sheriffs, the crown attorneys and the judges are all provincial responsibilities. They traditionally always have been. It is the province that has been involved in the all aspects of the administration of justice, including judges and the appointment of judges. The security of judges, which is the subject of this bill, in the district of Algoma has always been, in my opinion, very ably attended to by the sheriff and his staff in Sault Ste. Marie.

1030

The transport of prisoners and the guarding of prisoners has always been and should continue to be the responsibility of those police forces which have laid the charges. In our district that includes the Ontario Provincial Police, the Royal Canadian Mounted Police and several municipal police forces. The scheduling of police witnesses has always been and should continue to be the responsibility of those police forces which have laid the charges.

As officers of the court, and while in the courts, these policemen also will continue to carry out their duties and assist, if necessary, if some incident should arise where their assistance is required. That is where it should end, however, at least in the city of Sault Ste. Marie. A problem which may or may not be serious in Metropolitan Toronto should not result in province-wide legislation, just as should not have been the case with Sunday

shopping. I point out to this committee that Sault Ste. Marie probably was one of the few municipalities that accepted the local option on that particular issue. We implemented Sunday shopping.

Mr. Chairman: I was going to say we did not see you during the Bill 114 and Bill 113 discussions.

Mayor Fratesi: No, you did not, because I think we were probably one of the few municipalities that accepted that as—

Mr. Chairman: I have seen almost everybody else, and I think many members of the committee have.

Mayor Fratesi: Mr. Kanter, I think, can probably fully advise this committee of our community's co-operativeness in taking on that responsibility. I commend the province for allowing local municipalities to tailor-make legislation for their circumstances.

Mr. Mahoney: Sorry, I did not hear that. Could you repeat that, please?

Mayor Fratesi: I throw that comment right back to the government, however, when I say that a problem which may or may not have occurred in Toronto over the past several years should not result in province-wide legislation where the problem does not exist in communities such as Sault Ste. Marie.

I note this committee will be touring Toronto's old city hall and the courthouses in the area. That will present one picture; but I would invite the committee to tour the courthouses in northern Ontario and Sault Ste. Marie, which I suggest to you would likely paint a completely different picture.

I noticed in the Toronto Star yesterday that the parliamentary assistant to the Attorney General is suggesting the legislation may be misunderstood and that maybe local police forces should be deciding that special constables or civilians might be needed in most cases. I also note the comment that the bill will not change many of the existing security arrangements in which local police officers are already involved. That is great; if that is the gist of the legislation, things are fine in Sault Ste. Marie now.

The sheriff provides a good service. Police officers are there because they have other duties and will assist in security as required. If that is the intent of the legislation I will go home satisfied that today's expenses, being absorbed by the people of Sault Ste. Marie, while not wisely spent will have been required in any event.

The alternatives in Sault Ste. Marie, given our fiscal concerns, are that police will be taken off the streets to satisfy a provincial responsibility. I do not think you would want that. Certainly we in Sault Ste. Marie do not want that when we already have a shortage of personnel to deal with real needs out in the streets.

Those are my comments, and we thank you for the opportunity to make them.

Mr. Chairman: Thank you very much. I will get my act together here. We have 15 minutes or five minutes for each caucus.

Mr. McGuinty: I think the first gentleman who spoke—I am sorry, I do not know your name.



Mr. Bottos: Lorie Bottos.

Mr. McGuinty: You alluded to the lack of guidelines with regard to qualifications, experience and so forth of those who would be involved in this courtroom protective duty. His worship has alluded to the fact that the situation in courts in your area differs significantly from courts elsewhere. Do you not think it is appropriate that perhaps people on the scene, your own police, would be the ones best qualified to make judgements in this regard?

I can visualize that if the government were to impose criteria and guidelines that could be construed as our interfering in an area which is really within your purview of competence. Would you comment on that, sir, please?

Mr. Bottos: I think our sheriff is just as well qualified. He is in the courthouse all the time. He is certainly as well and probably better qualified than the police to assess the needs of the security for the judges and the courthouse. So I think it is really the sheriff's responsibility.

Mr. McGuinty: A number of people who appeared before us had a certain misconception to the effect that this service must be provided by bona fide policemen. You understand that is not the case; the bill does not stipulate that.

Mr. Bottos: Right. I realize that, but I still think it is a provincial responsibility. The sheriff should be providing that service, as opposed to the municipal police forces.

Mr. McGuinty: Surely. All right, thank you.

Mr. Kanter Mr. Chairman, is there a little more time?

Mr. Chairman: Sure.

Mr. Kanter: Could I continue then, if Mr. McGuinty has completed?

Mr. Chairman: Yes.

Mr. Kanter: I was just wondering if I might pursue one of the details of your concern. You have suggested the legislation does not make it clear that it is at the absolute discretion of the local police chief or board of commissioners to determine the security needs in the municipality. That was raised by several other groups who came before us.

You have not had a chance to consider it, because we just got this response that relates to that question. It is from the parliamentary assistant to the minister. On page 2 he suggests that the legislation will assign responsibility for security to the police, and the police must ultimately decide how to discharge this responsibility. In other words, I think it is the intention of the legislation to make it the responsibility of the police. Does that information from the Attorney General assist you in your understanding of the legislation? I do not really understand the concern you are putting, why that is not clearly the case in the legislation. Can you point out what causes your concern, if it is still there?

Mr. Bottos: I have not seen the response to which you refer, but I think my concern is that without something making it clear that it is at the absolute discretion of the police, you could have a situation where, if there

is an incident in a courtroom, and say a spectator is injured, the spectator could commence an action against the police force for breach of duty, under the legislation, for not ensuring security.

Mr. Kanter: But is it not generally the situation that as long as the police act reasonably in a situation, whether they are protecting a bank, a mine or a house, whatever, they would not be found negligent? Is this any different from the general situation involving the police carrying out their responsibility?

Mr. Bottos: I think what we might get dragged into though is the situation where someone says, "In Sault Ste. Marie you only had one officer on the first floor; whereas in other cities they do more, they have an officer per courtroom." The city then may seem unreasonable in its standard of care with respect to a service provided by police officers compared to other municipalities.

Mr. Kanter: This sort of takes me back to first year torts, and that is rather a long time ago.

Mr. Chairman: We are not going to go back to first year torts, Mr. Kanter.

Mr. Kanter: I would like to get into this discussion, but I guess I am pooh-poohed by time.

Mr. Sterling: Just to continue along on that, I think there is a significant difference in terms of maintaining security in a courthouse in contrast with a bank or anything else. I mean the obvious conflict is going to arise between the judiciary and the police, who as Mr. Kanter has put it under Bill 187, as far as I can understand it are charged with this. Other groups have brought up the problem of resolving a dispute between the judiciary and the police as to what level of security is involved.

I might add that in another part of the response the Attorney General has given us this morning it says, "It should be noted that sheriffs will continue the traditional role of ensuring the maintenance of decorum within courtrooms." Now I do not know what that means as well. I do not know where the responsibility starts and ends in terms of the police. It is not clear, and it is not clear how a dispute should be resolved.

1040

Have you included in your brief anything with regard to the estimated cost that this will add?

Mr. Bottos: On the first page of my brief I referred to \$450,000.

Mr. Sterling: This morning we received from the Attorney General a statement which is dated January 24, 1989. Maybe you can clarify this for me. It says: "Bill 187 information sheet. Estimated P104 hours to be used in fiscal year 1987-88 for security in holding areas and movement of prisoners within the courthouse and courtroom." What is that supposed to mean?

Mr. Offer: This is information which has been requested by the ministry from the sheriffs of the particular districts. That is the information sheet provided to the ministry from sheriffs.

I would like to start with item 3, because certainly at first instance it indicates the courts in existence, in this case in Algoma. It sets out, as the deputants have suggested, the district Supreme Court, the provincial court (criminal division) and the provincial court (family division). The sheriff has indicated that right at this time the security within the provincial court (criminal division) is being performed by the police. However, it also indicates that the actual security—and that is not a decorum function, if that is a follow-up question—in the district Supreme Court and provincial court (family) is being carried on by the sheriff.

Item 2 talks about the estimated P104 hours. Let me indicate that the P104, as I have been informed, is the general contract between the Ministry of the Attorney General and the sheriffs. That is a single contract which applies to all of the sheriffs in the province. If you take a look throughout these sheets, you will always see the indication "P104," which refers to the contract, one item of which is the hourly wage, if I am not mistaken.

According to the sheriff, the security functions being provided by his office at the courts in his jurisdiction for 1988-89 involve 3,300 hours. At the current hourly rate—and the current hourly rate is \$11.50—it comes to a cost of approximately \$37,000 for this judicial district.

Mr. Sterling: The question arises that we have an estimate of \$450,000, and we have a saving of approximately \$37,000. Is that right? Why is there such a discrepancy? Why are you saying it is \$450,000? I am not trying to be—

Mayor Fratesi: May I attempt to answer that?

I think there are eight courtrooms that would have to be provided with security. If the Supreme Court is sitting and all the district court judges are sitting and all the provincial court judges and the family court judges and the small claims court are sitting, you have a maximum potential of eight courts that have to be covered.

Just one point of clarification: the only security provided in provincial courts is when a prisoner is being guarded. If there is no prisoner being delivered to the courtroom in provincial court, right now the city police do not provide any security, other than a sheriff's officer who may be there to furnish some degree of security to the judge who is at risk from the general public who may be sitting in the courtroom.

Mr. Offer: I think the question Mr. Sterling has brought forward in the response is crucial, because the intent of the legislation is that the decision as to courtroom security rests with the police. You have alluded in your figures to eight courtrooms and sometimes there are not prisoners, and you are assuming that under this legislation you have to have some person, be it a first-class constable or a special constable, in each courtroom; but this legislation just does not say that. It states that the decision as to how the courts are to be secured rests with the police. It does not say, it does not mandate there has to be someone in each courtroom at all times.

In fact as you indicated earlier, in your estimation you feel there is no security problem in the courthouses in your district. It may very well be that the police absolutely agree with you. Under this legislation they would then take a look and speak to the sheriff, possibly, and say, "What are we doing now?" As it turns out the cost would not be the \$450,000, it might just be \$37,000.



Mayor Fratesi: I guess the response I am looking for is that if the legislation provides for an option which would simply allow that our police chief is satisfied with security in our courthouse to date, using what has been the provincial discretion over the last several years, that that is fine for Sault Ste. Marie and can continue, if that is an option provided under this legislation, then obviously there will be no changes and no costs.

Mr. Offer: That is an absolutely correct reading of this legislation.

Mr. Sterling: There will be a cost of \$37,000, though; you have to assume that responsibility.

Interjection.

Mr. Sterling: No, no; the province is paying \$37,000.

Mayor Fratesi: The province will pull its sheriff's constables.

Mr. Sterling: I guess the logical thing for you to do is to enter into a contract with the sheriff to provide the same services he was before, but you pick up the tab.

Mayor Fratesi: I still have a problem in philosophy. We have an Ontario Provincial Police force in our community that is just as able as the municipal police force to decide whether the courthouse security is adequate. If security in courthouses and administration of the court systems is a provincial responsibility, there is already a police force, a provincial police force, that could take this responsibility instead of moving it over to the municipality.

Mr. Runciman: A very quick question: in your memory, have you ever had any incident of a security problem in a criminal court in your municipality?

Mayor Fratesi: The worst incident in my memory, and I practice law so I have an ear to the grapevine, is a prisoner who picked up a chair and threatened to throw it at a judge. It happened when there was a police officer present. It was that type of incident that could have happened regardless of whether there was one police officer or 100 police officers. Aside from that, there have been no threats, verbal or otherwise, to our judges.

Mr. Runciman: So there has been one rather modest incident, in your memory.

Mayor Fratesi: Absolutely.

Mr. Chairman: I am sorry time has run out. Just for my own benefit, and hopefully for the benefit of the members, so I can follow this—

Mr. Hampton: I had my hand up as well.

Mr. Chairman: Oh yes, I will get to you.

I just want to clarify something. Is the \$37,000 that is being talked about over and above the \$3 amount that was granted or is that a reduction in the \$3 amount that was granted? I do not understand that.

Mayor Fratesi: I think it is the hours of pay for the sheriff's officers who are performing some function related to maintaining decorum.

Mr. Chairman: As I understand it from listening to this information, in 1985 the government of the day gave \$3 per household to the municipalities and that came up to some figure, and I do not know what it came up to in your case.

Mayor Fratesi: Approximately \$75,000.

Mr. Chairman: Is this \$37,000 a shortfall over and above the \$75,000 or do you in fact receive a net benefit, the difference between \$37,000 and \$75,000?

Mayor Fratesi: It is not paid to us. Someone has calculated that the cost for the sheriff's constables who are providing some security in the courthouse tallies \$37,000 in the district of Algoma. I assume that is correct?

Mr. Chairman: That is what the parliamentary assistant said. Just for argument's sake, let's presume that is right; I do not know whether it is or whether it is not. What I want to know is, is that \$37,000 over and above the money paid through the \$3—

Mayor Fratesi: No, we do not see it. It is paid through the provincial coffers to provincial employees right now and it has nothing to do with municipalities.

Mr. Chairman: So does that mean you have a windfall of the difference between \$37,000 and \$75,000? No?

Mr. Fratesi: No.

Mr. Chairman: I do not understand it, I am sorry

Mr. Sterling: Read the third paragraph on page 2, where it says, "In Sault Ste. Marie this increase would amount to about \$75,000, which represents only 15 to 20 per cent of the estimated cost of providing the security suggested."

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Mr. Chairman: That is of the \$450,000 they are talking about; but what I am trying to figure out and what I think it is important—

Mr. Mahoney: It is an estimated \$37,000 out of the \$75,000 under Bill 187; that is how I read it.

Mr. Chairman: Yes, but I have to be clear on this because I cannot follow it. Maybe I should ask the parliamentary assistant. Did they have the money paid to them?

Mr. Offer: Maybe I can clarify it. I would not want people to think Sault Ste. Marie is getting any windfall from this. If you take a look at the information provided by the sheriff of Algoma you cannot disregard the fact that right now the police are providing the security in the provincial court, criminal division; some portion of that \$3 per household might be used in that exercise. What this information indicates is that based on the estimation of the sheriff of Algoma, the cost to the sheriff's office in providing security is approximately \$37,000 per year; that is all.

Mr. Chairman: So to replace the sheriff—

Mr. Offer: So to replace the sheriff while retaining the same level of security might result in a cost of about \$37,000.

Mr. Chairman: Okay; I was just trying to find out. Mr. Hampton, you are up.

Mr. Hampton: Mr. Offer has only succeeded in confusing me more; but I will leave that because we have time to ask Mr. Offer these questions later.

Are you aware that none of the other nine provinces in Canada have followed this model, that in every other province the provincial government has assumed the responsibility for court security and feels that municipal police should have no part in that?

Mayor Fratesi: That is probably a fair statement. Just as the province assumes the maintenance of the building, because it is a provincial operation, it should assume and continue to assume responsibility for security in the building for whomever uses it, judges and the like.

The philosophy that it is a municipal responsibility falls apart; no one has made any good argument that it should.

Mr. Hampton: Let's work on that for a minute. You brought up a very interesting suggestion. There is a provincial police force whose wages are paid by the province. Are you aware that the security officers who work in this building are trained by the Ontario Provincial Police?

Mayor Fratesi: Yes, and they are wearing OPP uniforms. In our courthouses in the district of Algoma very often the OPP are there, as are the city police, guarding their prisoners and providing that level of security that has now been referred to; that is provided by the mere presence of city police.

Mr. Hampton: I think one of the important points in this legislation is that if you are going to have adequate security—and there has been some discussion about liability here—I think some of the questions that might occur if an issue ever developed about liability for providing or not providing adequate security, one of the things that would come out would be: "Did you train your security officers?" Right now, the OPP trains the people who provide security in this building, not necessarily just the people who carry guns but the people who are not armed are all also trained in security. Were you aware of that?

Mayor Fratesi: Yes.

Mr. Hampton: They are all trained by the OPP. It would seem at the outset that if you are interested in having people trained as security officers, the people who ought to do it would be the OPP. So there must be some other reason this is being dumped on municipalities. Are you aware of the statements made by the Chief Justice of the province on the opening of the courts each year? Mr. Justice Howland made the same statements, basically, in 1988—

Mr. Chairman: You have reduced the Chief Justice to a mister; You are slipping.

Mr. Hampton: It is amazing what the chairman of this committee will get hung up on.



Mr. Chairman: I am looking after you, Howie.

Mr. Hampton: The Chief Justice, in both of his annual reports in the last two years, has complained to the province that there has to be better security in the courtrooms.

I would suggest to you that what is happening here is that you—municipal officials—will now be substituted for the province in terms of being on the firing line in this matter. Where there used to be firing back and forth between the Attorney General's office and the judges over court security, you will now be on that firing line. The Attorney General will hold up his hands and say: "It's not our problem. You go talk to the municipal police force."

I think you are quite right to have some apprehension about this bill. This bill does not say you shall have the discretion to determine what the security is; the wording is that you shall ensure the security is there. I would suggest to you that the position you will be in if this bill passes is that judges will be after you to provide adequate security. You may run into situations where judges will simply adjourn court if they do not feel the security is adequate, and that will rest on your shoulders.

The other thing I would suggest to you is that I am not sure your police force advertises itself as security guards. I am not sure police forces should have anything to do with being security guards.

Finally, maybe you can provide this, because I do not find that the information provided here by the Ministry of the Attorney General is adequate: as you both practise law in the courts in Sault Ste. Marie you must have some idea of the staffing in the courts in Sault Ste. Marie, do you have any idea what sheriffs' officers are paid?

Mayor Fratesi: I think someone mentioned \$11 an hour as a figure. The province basically uses retired people, and has for as long as I can remember, in endeavouring to provide either a level of decorum or security in the courthouses; \$11 an hour probably is a fair figure.

Mr. Hampton: How do you arrive at the \$37,000-a-year figure?

Mr. Offer: I imagine the question is posed to me? Basically what we did was multiply the 3,300 P104 hours by the going rate.

Mr. Hampton: Those are all the questions I have.

Mr. Bottos: I do not think anyone who goes to the courthouse in Sault Ste. Marie sees the sheriffs' officers as people providing security service. They are there providing decorum so you do not walk in while the judge is talking and do not smoke in the courtroom, things like that. I do not think anyone sees them as being there to quell any disturbance.

I do not think you can say that \$37,000 being paid by the sheriff can be equated to the security that our police force thinks it is going to have to provide. I think our police force is going to err on the side of caution. They are going to make sure there is security there if they are told they have to ensure security. I do not think those figures are can be equated to the cost of—

Mr. Chairman: Have your judges in Sault Ste. Marie required more than just the decoration you talk about of sheriffs' officers providing?

Mayor Fratesi: For the most part, no. Aside from the one incident I mentioned there has been no incident with respect to security. It is correct that there are police officers—OPP, Royal Canadian Mounted Police and city police—in the courthouses and in the courts during most court sittings. The mere fact that they are there as witnesses or transporting prisoners provides that air of security, and that has been sufficient. The presence of the sheriffs' officers has supplemented that to provide the level of service that is required in our community. Nothing more is required.

Mr. Sterling: Can I ask the parliamentary assistant? I have looked at Ottawa's return on the same sheet, and Ottawa has zero hours. Okay? It is important to remember that on the 3,300 hours it says, "Estimated P104 hours to be used for security in holding areas and movement of prisoners within the courthouse and the courtroom." Normally, as I understand it, the police who have charged the particular accused do that.

1100

It is also noted on the Ottawa return that the sheriff, Bruce Hamilton, took the time to note at the bottom that there is one deputy per floor as a security officer. This officer checks courtrooms, halls and corridors. If the alarm goes in the courtroom the sheriff's people from all floors respond.

Ottawa police look after prisoners in holding areas and courtrooms. Their people are called special constables. They are not armed. There are 26 on staff as well as a sergeant and an inspector.

Can the parliamentary assistant tell me: if the sheriff is responsible—you say in your statement here that he is responsible for decorum in the courtroom—in providing things like one deputy per floor of the courtroom in a security role, is that classified as looking after decorum?

Mr. Offer: On the security basis, the sheriff would not have that responsibility; that responsibility under the legislation is the decision of the particular police force. The sheriff's officers, as they now do in some instances, provide a security function in some areas, as Algoma indicated in terms of Supreme, district and family courts. The sheriff's office also provides what might be determined as a decorum-preserving type of function. If your question is whether the sheriff would have to continue to do the decorum function the answer would be yes.

Mr. Sterling: I guess what I am asking is: are there other parts of the sheriff's budget which would be allocated to security functions at the present time?

Mr. Offer: Maybe Mr. Peebles can respond.

Mr. Peebles: I think those people do a mixed bag. The sheriff has one person per floor in the courthouse in Ottawa. I suspect he would probably decide to leave those people there. There is not a great deal they do in terms of security. It is kind of a contingent thing. What they normally do is help direct people to the right courtroom when they get off the escalator or the elevator. I would imagine he would keep them there for that purpose.

Mr. Sterling: There seems to be a different interpretation of the questionnaire by each sheriff, therefore I do not know what conclusions I can draw as a result of the questionnaire and whether the 3,300 hours for Algoma means anything in terms of what the police are going to have to pick up.

Mayor Fratesi: If I may, I would be hard pressed to accept that \$37,000 would be saved by not having these sheriffs' constables around, because I would hope the province does not envision policemen pouring water for the judges, opening doors and the likes of that. I would think you would need these individuals around anyway.

Mr. Chairman: They will still be there, as I understand it.

Mayor Fratesi: I cannot see there would be savings in our community.

Mr. Offer: I think what you have to realize is that this 3,300 means hours in terms of security. There are of course many other hours that sheriffs' officers put in. The whole question of the decorum function is not part of this legislation. The only thing you see on the information sheet is if there is any function provided by the sheriff which might be deemed to be a court security type of function.

Mr. Sterling: It is an important point though, in terms of what in fact this legislation is trying to do. I am still not clear, even though I sat here for three days. The sheriff in Ottawa-Carleton—notwithstanding what you asked, and the question was how many P104 hours there were—then writes at the bottom that he has security officers throughout the courthouse providing—I think Mr. Peebles was right—a joint security/decorum function. Who is now responsible for that? Are the police responsible? Are you going to have two people standing on each floor now?

Presumably under this bill the police are responsible for security. On each floor of the Ottawa courthouse, you have a fellow standing there who serves a dual function. He tells Dalton to go to courtroom 1 and he tells Ron to go to courtroom 2, but he also has his eye peeled for problems. He has a security function. Does he no longer have a security function?

Mr. Hampton: Similarly, I look at Hastings—I guess it is Belleville-Hastings—and it says again zero P104 hours. Then it goes on and it says that the sheriff provides security in Supreme and district court and in provincial court (civil division). Then in the addenda at the bottom we are told that "police officers are only in attendance when accused is in custody or their presence is required to give evidence," and basically that the sheriff is responsible for security; yet we are told that there are zero hours for security.

Mr. Chairman: Mr. Hampton, these are matters that can be covered without keeping these gentlemen from their appointed flight back to Sault Ste. Marie. We also have another deputant. I got a little lax in letting you slide in. We could do this afterwards with the parliamentary assistant.

Mr. Offer: Sure.

Mr. Hampton: This bears on what these gentlemen are trying to tell to us. We have statistics here provided by the Ministry of the Attorney General which relate directly to their courthouse, and yet we see in other places that the figure that is given in terms of hours does not agree with the addenda information in terms of who provides security and what security is provided.

Mr. Chairman: Okay; I understand what you are saying, and I suppose I allowed Mr. Sterling to go on, but I think at this point, without unanimous consent, I am not going to let it go any further. We do have another deputant



and we have gone over the time we had for this deputation, so unless I have unanimous consent—do we have unanimous consent to continue for a further period of time?

I am sorry. I am not hearing anything from anybody. Is anybody out there?

Interjections.

Mr. Mahoney: If this is a point of order, we are not dealing with the questions and the concerns raised by the mayor and the legal representative from Sault Ste. Marie, we are getting off into all these other data regarding Ottawa and Hastings and other areas. If there is some need to continue with the points raised by the deputant, then I would say continue; if there is no need, I would suggest we go to the next deputant.

Mr. Chairman: Mr. Hampton says there is, but I am going to ask—

Mr. Mahoney: I did not really hear him say that.

Mr. Chairman: Yes, he did. I am going to ask for unanimous consent if we are to continue any further. If we do not have unanimous consent, I am going to bid the mayor and the solicitor adieu, or whatever it is, and get on to the next delegation.

Do we have unanimous consent?

Mr. Sterling: Can we just ask them if they have any other remarks, because we have been talking for a while about these figures?

Mayor Fratesi: Just to close, Mr. Chairman, we will stay to hear the next deputant, because this is an important issue to us.

The point we wish to make most firmly is that this is a provincial responsibility, and nothing in the legislation convinces us that anything has changed to see it become a municipal responsibility. If there are costs because of requirements in the metropolitan areas, then the province should deal with it as a provincial responsibility. If it has to be a police force decision, you have a municipal police force that can decide that in any municipality. That is our strongest argument.

Mr. Chairman: We thank you for coming forward.

Mr. Faubert: I do not know how long we have to keep signalling that we want to ask a question, but you nodded yes about 20 minutes ago when I said I had a question. We are in the process of—

Mr. Chairman: All right. In fairness, I think Mr. Hampton jumped in before I was able to recognize you.

Mr. Faubert: Oh yes; but then I thought that you had a list.

Mr. Chairman: Okay; very briefly.

Mr. Faubert: I just want one brief answer from the mayor, and it was included in his original presentation. You went through a series of provincial decisions which had impacts on your municipality. I was very interested in that because you are repeating what a number of other municipal representatives have told us, but one item you mentioned was new fire gear

regulations. Where did that come from? There are no amendments of which I know to the Fire Departments Act or the Fire Marshals Act.

Mayor Fratesi: I think they have been promised. Our fire chief certainly has kept in touch with the Solicitor General's office and we understand new turnout gear is to be mandated tomorrow; we have heard that for the last couple of years.

Mr. Faubert: Tomorrow?

Mayor Fratesi: It has always been tomorrow and—

Mr. Kanter: Soon.

1110

Mayor Fratesi: Soon; and it is an instant cost that the municipality has to pick up because of—

Mr. Faubert: Yes; I recognize because—

Mayor Fratesi: It is all very good legislation. Every item is a very good piece of legislation, but when the full cost is passed on to the municipality and we do not get increases in our unconditional grants, we have a real problem.

Mr. Faubert: I take it you are also making a case for consultation?

Mayor Fratesi: Absolutely.

Mr. Chairman: Thank you very much. Have a safe trip back to Sault Ste. Marie.

The next deputant is Dahn Batchelor, collection manager of Comret Credit Inc. Mr. Batchelor, you have 30 minutes. You can use all of that time to read the brief, of which we have a copy; but if there is any time left over we will have questions with the time divided equally among the various parties. Please proceed.

DAHN BATCHELOR

Mr. Batchelor: I wear a number of hats. One of them is that I am a criminologist and also the editor of a journal dealing with crime prevention and justice. Today I am just going to be wearing two hats, one in my capacity as collection manager of a collection agency, and also as a paralegal who represents banks and trust companies in small claims courts.

The proposed amendment, the addition of section 152a, actually relates to the bailiffs of the small claims courts. I wish to deal with that one aspect. This amendment is an extremely important one, yet I am not sure if much is being said about it. The omission of this new section 152a could cause unnecessary financial burdens for many plaintiffs in the small claims courts of Ontario.

I wish to quote from a book called Small Claims Court Practice, and when you hear what I have to say you will realize how important the message in this quote is. It says, in part: "One important measure of the real cost of the case to a person involved in a small claims action is the total cost as a

percentage of claim amount, since the ratio helps judge whether the decision to pursue a case is economically justified. At the very least, if plaintiffs stand to incur costs of as much or more than they could win, then the small claims court does not serve its purpose."

If you had spent as much time as I have in the small claims courts of Ontario attempting to bring justice to the plaintiffs who are being ripped off by dead-beats who know the court system backwards and forwards, you will appreciate the real significance of the statement I have just read to you. The courts try their best to bring some form of relief to the plaintiffs, but they can only do so much. When all efforts are exhausted, the plaintiffs go away believing that the courts have failed them.

The proposal to bring section 152a into the Courts of Justice Act may actually be the way to put an end, once and for all, to the nefarious behaviour of dead-beats, who up to now are beating the system. To appreciate what I am saying, I am going to tell you what happens when the court system fails, and as I tell it to you you will see how section 152a in the proposed legislation will help many unfortunate plaintiffs who believe they can get relief in the small claims courts and end up throwing good money after bad.

I will cite one case. The plaintiff's name will be changed to protect her identity. For the purpose of this brief I will call her Mary Jones. Miss Jones loaned \$200 to an ex-boyfriend who had earlier left their Ottawa apartment and moved to Toronto alone. When Mary asked for her money back he sent her a cheque to cover the loan drawn on an account with one of the branches of the Bank of Montreal in Toronto. The cheque came back from the bank faster than Ben Johnson did from South Korea. Despite her repeated requests for her money, he refused to send it, so she filed a claim in the Ottawa small claims court and had him served with a summons in Toronto. He did not file a dispute, so an in-default judgement was signed against him.

Now this only cost Mary \$30 in court costs, but anyone who has ever been the plaintiff in an action knows that having a notice of a judgement in your favour is nothing more than having a piece of paper in your hand. The courts are not collection agencies and will do nothing unless you are prepared to take further steps to recover your money.

Because her ex-boyfriend had sent her a not-sufficient-funds cheque, Mary knew where her ex-boyfriend banked, so she filed a garnishee against his bank account in Toronto. It cost her \$4 to transcribe the action to Toronto and another \$12.83 for the cost of the garnishee.

Most of us in the collection business are a little wary about garnisheeing a bank account where a cheque was issued that was later returned NSF, but Mary was desperate and it was worth a try. As to be expected, the bank sent a return to the court stating that it could not honour the garnishee since it had closed the account because of the many NSF cheques their customer had written on his account.

Mary asked the Ottawa court for some advice and was told she could issue a judgement summons against the debtor. This she did and it cost her another \$14.50. She was notified after the debtor was served that the judgement summons, JS, hearing would be held on May 5, 1986, in one of the small claims courts in Metropolitan Toronto. She did not want to come to Toronto just for the hearing. She was given the name of an agent who would represent her in court, and he agreed to handle the JS hearing for her.



The purpose of a JS hearing is for the plaintiff or her agent to question the judgement debtor as to his finances, such as where he banks, works, whether or not he owns property, and also to get a commitment from him that he will pay a certain amount each month to the court until the account is paid in full.

On the night of the hearing, the debtor did not appear. The agent asked for a committal warrant to be issued against the debtor and asked the judge to award 10 days for contempt. The request was granted, and the agent wrote the plaintiff and advised her that if she wanted the warrant enforced, she would have to send the court \$18, plus a letter asking that it be enforced; and that the court must have both within two weeks otherwise the warrant would not be enforced. The agent sent her his bill for attending court, the bill being \$20. She paid the agent and then thought about what she would do next.

Now this girl had already spent \$81.83 in court and legal costs and fees, and she still had only a piece of paper showing that she had obtained a judgement. She decided that since she had gone this far, she might as well go a bit further. She obviously had greater faith in our system of justice than she should have.

She sent the court the \$18. When the court received the money and her letter, the bailiff of the court sent a letter to both the plaintiff and the debtor advising them there would be a warrant hearing to determine whether or not the 10-day committal was to be enforced.

Again, Mary did not want to come to Toronto. She hired the agent to represent her at the warrant hearing. He did, and for this he charged her another \$20. Up to and including the night of the warrant hearing, she had spent \$119.33 in costs and fees to collect the \$200 the court said he owed her.

The judgement debtor did not appear at the warrant hearing. The court ordered that the warrant be enforced. It was turned over to the bailiff of the court to enforce it. The bailiff went to the man's apartment and the debtor came to the door. The bailiff told the debtor that he had a committal warrant and that he was there to take him to jail for 10 days. The man laughed at the bailiff and asked a very pertinent question. The question was, "You and whose army?" The man was over six feet and the bailiff was not. The man weighed over 250 pounds and the bailiff did not. The man was a mean son of a bitch and the bailiff decided that discretion was the better part of valour.

The bailiff called the police and then waited for an hour and a half for them to arrive. The two officers arrived and the bailiff asked them to assist in arresting the man. One of the officers told him that they were only there to keep the peace. In other words, they were to make sure that the bailiff did not get his eyes punched out.

This is more than the response I got several times years back when I was serving summonses. Once, in 1982, the debtor threatened me. When I returned a few weeks later with another summons, the Ontario Provincial Police officer arrived, looked at the summons, realized that it was a civil summons from the district court and drove away with the comment that they do not get themselves involved with civil cases. My complaint to his inspector brought the man back with orders that he was to stand beside me while I served the summons.

On another occasion, I had to serve a subpoena on a man who threatened to kill anyone who attempted to serve him. I called the York region police and the dispatcher refused to send anyone to protect me, because the subpoena was

a civil subpoena and not a criminal one. I filed a charge under the Police Act against the officer and his chief of police and I negotiated a deal. I would withdraw the charge and he would make sure that never happened again. I withdrew the charge and the problem never surfaced again, at least in York region.

However, once when I called the police in Toronto because the family-court document I was to serve stated that the man was violent, the sergeant at the police station refused to send anyone to protect me. I filed a complaint against him and his deputy chief said that every police officer has the right to refuse a request from a citizen if the citizen cannot prove that the man is violent. I thought that was a silly response, so I had the matter turned over to the public complaints commissioner and he concurred with the deputy chief. I still think it is a silly response.

In any case, the bailiff and the two officers got into the building and the bailiff knocked on the door of the debtor's apartment. A woman answered, asking who was there. The police replied: "We are the police; open up." The woman was no dummy. She had been primed for this visit. She said, "He is not here." I asked myself, "How did she know they were after the debtor?" Then she asked, "Have you got a warrant to come into my apartment?" The police did not. The bailiff did have a committal warrant, but that committal warrant was about as useful as a car without an engine. It is there but you cannot do anything with it. The bailiff cannot force his way into the apartment. The bailiff and the police left empty-handed.

A couple of weeks later, the bailiff was in the area and he listened through the apartment door and heard a man's voice inside. This time he was sure that the man was there so again he called the police. They only took an hour to arrive the second time and when they got to the apartment door the man was just exiting. The bailiff said, "Mr. Such-and-such, I have a warrant for your arrest." At last, he had his man; but the bailiff had no desire to take the man into his car and drive him to the nearest jail all on his own. He, like all the other Ontario court bailiffs, had been instructed years ago by one of the former directors of the courts administration offices of the Attorney General's office that bailiffs were not to carry arms or handcuffs.

Here was a bailiff with a warrant of committal which he could not enforce without risking life and limb. Now I know what you are thinking. The warrant is specifically addressed to bailiffs of the small claims court and also to all peace officers. Police constables are peace officers, so let them be the ones to take the debtor to the nearest jail.

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That is what the bailiff asked the officers to do and that is what the officers refused to do. They said they had been sent there to make sure that there was no breach of the peace and they had fulfilled their job. They told the bailiff that it was his job to take the debtor to the jail, not theirs. With that they left him all alone with his prisoner. I am not sure who was prisoner of whom at that point of the story, but you remember what I said about discretion being the better part of valour? The bailiff recognized the wisdom of that time-worn phrase and left the scene without his prisoner, and five months later, he let the warrant lapse rather than request a six-month extension.

When the woman called the court half a year after the warrant had been issued and was advised that she would have to seek issue of another JS, and that would cost her another \$14.50 in court costs plus another \$20 in legal



fees, thereby increasing her costs and fees to a total of \$153.83 in her efforts to collect the \$200 judgement, she knew it was time to quit; and quit she did. Learning about the failure of our court system cost this unfortunate woman well over half of the money owing to her. Had the man served 10 days in jail he might have been more inclined to pay the court the \$200 plus court costs, and the woman would have only been out the \$40 she paid the court agent.

Remember the words I quoted earlier, "At the very least, if plaintiffs stand to incur costs of as much or more than they could win, then the small claims court does not serve its purpose." If this woman had attempted to exercise her right to make a judgement debtor pay his debt to her through the courts, she would have ended up spending more money than was originally owed to her.

The problem for the most part can be solved with this new section 152a. The amendment reads, "Warrants of committal, warrants for arrest and any other orders requiring persons to be apprehended or taken into custody shall be directed to police officers for enforcement."

Now let's return to this man's apartment door again, where instead of the bailiff carrying the committal warrant the police are carrying it. Here is how the scenario would go:

"Police: 'Are you George Sanders?'"

"Sanders: 'Yea. Who wants to know?'"

"Police: 'We have a committal warrant that directs us to take you to the nearest jail, where you will be incarcerated for 10 days.'"

"Sanders: 'What's the charge?'"

"Police: 'Would you turn around, sir, and put your hands behind your back?' Click."

"Sanders: 'What's this all about?'"

"Police: 'Just come with me, sir.'"

"Sanders: 'What am I charged with?'"

"Police: 'You are not charged with anything, sir. You have been convicted of contempt of court and sentenced to 10 days in jail....Sir, will you watch your head as you get into the car?'"

Now does this scenario not sound better than the first one I gave you? Of course it does. That is because section 152a would not leave the burden of arresting and transporting a giant—probably a violent—judgement debtor to a 175-pound, unarmed court bailiff.

Yesterday morning I had occasion to speak with His Honour, Chief Judge Turner of the Provincial Court civil division. I pointed out to him that judgement debtors were making a mockery of court orders by simply refusing to obey the court orders to attend the hearings or to make payments to the courts as ordered.

His reply was that the judges could sentence the debtors to jail for contempt of court. He was obviously not aware that those sentences were



meaningless, because the bailiffs had no means of enforcing the committal warrants.

I realize that if the police are given the task of enforcing the committal warrants they will balk at this added burden. To some degree I sympathize with them. I understand that the Metro Toronto Police Force has, on the average, 10,000 outstanding warrants to enforce at any one time and they need small claims courts' committal warrants like they need the acquired immune deficiency syndrome.

But if they are not going to pick up these dead-beats then who is? The 175-pound bailiff does not want to risk being murdered when he is only getting \$5 for that particular task. If you believe that bailiffs want to do it then you are just the people I am looking for; I have a bridge in Brooklyn I want to sell you.

I recently attended a hearing in Mississauga at which I requested a committal order. The dead-beat not only refused to pay the court the moneys as ordered, he actually had the temerity to refuse to even attend the motion where I was asking for his committal to jail. Had he attended he would have been given an opportunity to perhaps convince the judge that he was not able to pay the court, that he was not simply disobeying the court order. The judge told me my request for 10 days was not enough; he then gave the man 25 days in jail. The judge's comment to the people in the court, right after he sentenced the man to jail, was most apt. He said, and I quote, "If that won't get his attention, I don't know what will."

I am not advocating that debtors be sent to debtors' prison. I am very sympathetic to those persons who cannot honestly pay their bills, but those dead-beats who can pay their bills and refuse to do so, despite the threat of imprisonment for contempt for ignoring court orders, should have the book thrown at them. Alas, the way our small claims court system works today, the book being thrown does not even reach them. They stand there looking out their windows and smirk at the bailiffs, knowing that no matter how many times the judges in the small claims courts sentence them to jail they are not going to jail.

Admittedly there are a few who do, but that is a rarity. I spoke with one court bailiff yesterday who told me that if the warrant is for a woman he will not arrest her, because she would probably accuse him of raping her in the back seat of his car while he was taking her to jail. He would have to be quite a contortionist to drive and rape at the same time, but because of the possibility of being falsely accused of such a wrongdoing, he refuses to enforce committal warrants against women in his territory.

Quite frankly, I do not blame him. If you were a court bailiff and you had arrested a snarky woman who was sitting in the back seat and suddenly she opened the window and began yelling to the people in the street, "Help me, I'm being kidnapped and raped," would you get the distinct feeling there has to be a better way to earn \$5?

After talking with bailiffs in various parts of Ontario, I think I am speaking for all of them when I say take the committal warrants out of our hands and give them to the police. They do that already in Guelph.

If dead-beats want to continue to refuse to honour their debts and continue to refuse to obey the orders of the courts, then the enactment of section 152a is the way we will get the message across, as the judge in Mississauga said. If you decide that section 152a is only for the benefit of

the district court and the Supreme Court and you omit the small claims courts as beneficiaries of this amendment, then section 152a, in my respectful opinion, will be like a car without an engine. We are almost there, but it will not be taking us anywhere.

The Acting Chairman (Mr. Kanter): Thank you very much. We have about 10 minutes left. If I may make an initial comment: you sometimes hear it is useful to take people through legislation step by step; I think you did that and you did it with imagination, verve and humour and we all appreciate that.

Mr. Batchelor: I once made the United Nations laugh at my presentation. I find that humour does add a little.

Mr. McGuinty: Mr. Batchelor indicated the number of hats he was wearing when he came in. I suggest he develop his fifth hat as scriptwriter. I thought your presentation was very stimulating.

Mr. Batchelor: I should have mentioned that I am also the former deputy bailiff of the Toronto small claims court. This is an area with which I am very familiar.

Mr. Sterling: In terms of Bill 187, are you referring to any particular section?

Mr. Batchelor: Yes, section 152a. It is at the bottom of page 2. It says, "Warrants of committal, warrants for arrest and any other orders requiring persons to be apprehended or taken into custody shall be directed to police officers for enforcement."

My concern and the reason I came was that, without knowing what was going on with this committee prior to my coming here, I did not know if this committee had already been advised, maybe by the police: "Take that out. We don't want any part of that." I thought I had better get up and say maybe there is a need. I feel there is.

Mr. Sterling: Would the parliamentary assistant like to comment on whether this particular section covers the concern of the witness?

Mr. Offer: The short answer is that it does.

Mr. Batchelor: That is a great relief. Does that mean that the bailiffs will no longer have this unwanted burden? I am wondering if the representative of the Attorney General can advise me on that.

Mr. Offer: That is correct.

Mr. Batchelor: I know an awful lot of bailiffs who are waiting with great anticipation for me to call them and tell them the good news.

When I spoke with police officials in Guelph about this matter, they told me they do have the warrants to enforce, but in fact they are not enforcing them. They said they have so many criminal warrants to enforce that they do not have the manpower to go after these types of warrants. What they are doing is putting them in a computer, and if they happen to come across the person during a computer check they will act on it. My concern is that most people they may come across in computers are usually drivers of cars. A lot of these people who have warrants outstanding may not be drivers of cars and the thing has just become meaningless again.

Mr. Sterling: It is better than the present situation.

Mr. Batchelor: Yes, I agree.

There is another problem I should bring out, though. It has been brought to my attention by several bailiffs. The way a lot of the bailiffs are working now they know they are not going to pick the person up, but they know the person does not know that so they say: "Why don't we work a deal? Why don't you make some payments to my office and I'll hold this warrant in abeyance?" That is a means getting the money getting; and that can work.

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If you bring in this legislation and leave it entirely to the police, the question will be raised: "If the man says, 'Look, I have the money right now, I will pay it,' what do the police do?" Does he have the right to pay it to the police officer, or will the man have to be subjected to being put in jail and then having to get a lawyer to get him out because he wants to pay? Those are areas that have to be of concern.

I would like to suggest that maybe a way out of this is to let the bailiff have the warrant initially to try to work something out. It is beneficial to everybody that he be able to collect the money on the warrant rather than enforce the warrant. But if he is unsuccessful then he should turn the warrant over to the police and say: "I have done my best. I cannot do any more," and let the police actually pick up the person at that point.

Mr. Faubert: Did you hear that?

Mr. Sterling: It is on the record.

Mr. Chairman: Do you have a comment?

Mr. Offer: If I could just have your indulgence for one moment.

Mr. Chairman: We will go to Mr. Sterling in the meantime.

Mr. Sterling: I did not know whether you had a comment with regard to the procedure the witness was bringing forward. I just hope you were listening, that is all, because it seemed reasonable and logical.

Mr. Chairman: Do you have any further questions, Mr. Sterling?

Mr. Sterling: No.

Mr. Chairman: Mr. Hampton?

Mr. Hampton: No.

Mr. Chairman: Okay. We will perhaps await what the parliamentary assistant has to say.

Mr. Offer: If I might, I just wanted to comment on an earlier point with respect to the Hastings information sheet. I think it was brought forward by the—

Mr. Chairman: No, no. Maybe you could deal with the question Mr. Batchelor has brought forward.



Mr. Offer: That is fine.

Mr. Faubert: Did you hear the question?

Mr. Offer: No. I am sorry.

Mr. Batchelor: It was not a question, it was a suggestion.

You heard my observation about the bailiffs, that they should go out initially to try to collect the money; and if they are unable to collect then turn the matter over to the police for the purpose of taking the person to jail for contempt.

I should point out, by the way, that the contempt charge is not because they did not pay the money but because they did not appear before the judge. I got a letter from the chief judge pointing out that it is not for not paying the money but for refusing to appear before the judge to explain why they did not pay the money.

Mr. Mahoney: The courts refuse to act as a collection agency unless you are in contempt.

Mr. Batchelor: That is right.

Mr. Offer: If I hear the suggestion, the question I have is that if there is a warrant for committal it will be issued by the judge and it is anticipated that it is the police who would pursue such a matter. Obviously there might be some activity that goes on prior to the warrant for committal being issued—

Mr. Batchelor: That is right.

Mr. Offer: —which might be carried through by a bailiff; but once a warrant of committal is issued—

Mr. Batchelor: The judge signs the order, but the actual warrant itself is signed by the clerk of the court on the written instructions of the judge. When the bailiff goes out to enforce it he has a choice. He can either take the person into jail if he thinks he is more than willing to take that chance, or he can negotiate something with the person and say: "All right, instead of my enforcing this warrant I am going to use my discretion and allow you to pay half of it now and the balance next month or next week or whatever," and that happens then at that point.

My suggestion is that if the bailiff concludes he is unsuccessful because a person is refusing to co-operate or anything of that nature, he should turn the matter over to the police and say: "I have done my best. Here is a warrant; you enforce it."

I am just suggesting that the way the present warrant is drafted up it says, "To the bailiffs of this court and to all peace officers." I am suggesting that part remain, giving the bailiffs an opportunity to exercise their authority to try to collect the money. Although I have heard somebody say the courts are not collection agencies, their bailiffs have the authority to collect the money. If they fail, they can turn to the second part of this warrant, which says "to all peace officers." The bailiff just turns the warrant over to the police department and says, "Go and do your thing."

Mr. Chairman: Mr. Mahoney first; but if I might just comment. The thing that frightens me is that a bailiff is using the threat of a court order to work out a settlement with the debtor, which is probably contrary to the Criminal Code. You are using a criminal sanction to extract money from a debtor.

Mr. Batchelor: It is not a criminal sanction, it is a civil sanction.

Mr. Chairman: Yes, but the judge's order is quite clear. The practice, as I understand it—I may be wrong—is that the judge issues the warrant of committal because the debtor has failed to appear and that is an effrontery to the court.

Mr. Batchelor: Yes.

Mr. Chairman: Usually what happens as a matter of practice is that the judge invites the person back to purge the contempt, and if he purges it that is the end of it.

Mr. Batchelor: The warrant is dismissed; that is right.

Mr. Chairman: I do not know about the other members of this committee, and I probably should not speak as chairman, but I have great reservations about a bailiff being able to go out and use a court order to work out a settlement with a debtor; that gives me great concern.

Mr. Sterling: I think if this carries through in its present form—which it probably will—that will be the last straw and the bailiff will be out of it at that stage of the game.

Mr. Batchelor: Yes.

Mr. Sterling: The problem is with putting the police in a position of having to negotiate or deal with the bailiff. I think it has to be a straightforward function. If you are in contempt of court and there is a warrant for your committal, then Buster you are in jail and that is it. I think the dead-beats are going to learn that.

Mr. Batchelor: It has been policy in the courts in the past, though, that once the judge orders the person is to be committed to jail for 10 days—by the way, I should add that he can be committed up to 40, but usually 10 days is what is given—a notice is sent to the debtor stating that on such and such a day the debtor is to appear in front of the judge to purge the contempt.

The debtor has two choices at that point. The debtor may go in and pay the account directly to the court, and that is considered by the judges as purging the contempt. I only know of one case where the judge said to the debtor, "I know you have paid up but I want you back on such and such a date to tell me why you never showed up." I only know of one case where that happened. It happened in Hamilton.

If the debtor does not show up at the warrant hearing that person really is in contempt. He has had two opportunities to appear and he has refused to do so. The bailiffs go to pick up the person and the person says: "Listen, I want to do something. What can I do to stay out of jail?" This may be improper, but I am telling you that is common practice.

Mr. Chairman: It may be common practice but I would not endorse it.

Mr. Batchelor: But they do that already on executions of goods. They do not seize the goods.

Mr. Chairman: Mr. Mahoney; and then Mr. Hampton.

Mr. Mahoney: Maybe we are getting off track here. The issue seems to me to be will the police indeed enforce the committal warrant—that is make the arrest, go and knock on the apartment door and take the person into custody? You can put that in legislation to any extent you wish, but if they refuse to do it because it is a civil matter then your bailiffs are still going to be at the same risk and in some instances in jeopardy.

The issuing of a not-sufficient-funds cheque, to use your example, as I understand it is a criminal matter, is it not?

Mr. Batchelor: Only if the cheque was issued when goods were taken at the same time. In the particular case I cited that would not apply.

Mr. Mahoney: I hear what the parliamentary assistant has said, that in fact it will be a police responsibility to execute those committal warrants; but I question whether or not they will actually do it.

Mr. Batchelor: So do I.

Mr. Sterling: If a member of the public demands it they will have to do it.

Mr. Offer: The question of the collection of dollars by bailiffs is not going to change at all, but once a committal warrant has been ordered that is a police matter and there is no negotiation whatsoever, nor should there ever be. The police must enforce that order. That is just, I must say with the greatest respect, the long and short of it all.

Mr. Batchelor: Yes, I agree. It should be.

Mr. Sterling: Even if the guy comes up with the money?

Mr. Hampton: Although I appreciate Mr. Offer's most recent comment, I want to go back to the comment he made earlier when he was asked a question by the deputant and his answer was, "The short answer is yes." I think that is where some of the confusion comes in.

Mr. Offer: I think the question posed, and maybe Hansard will be able to help, was whether the police will be responsible for looking after these matters. The short answer, in terms of warrants for committal, was yes. The answer remains yes.

Mr. Chairman: I think as well, Mr. Hampton, if I read the deputant's request clearly, what he is asking for is that the section be amended to allow the bailiff to go out first, and if he cannot succeed then the police would enforce the committal warrant. I think he has heard the views of most of the members of this committee. I should not have been into it as chairman, but I would find it a most unsavoury arrangement. It almost smacks of using a criminal sanction or the threat of being sent to jail—debtor's prison, as it used to be—to extract a settlement. I certainly would never countenance that, and I do not think anybody would.



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Mr. Batchelor: But that same principle applies when the bailiff is given an order to go out and seize goods. The bailiff will go out there, and instead of seizing the goods he will work something out with the debtor to make payment.

Mr. Chairman: It is one thing to work something out with goods, it is another thing to work out the payment of a debt on threat of going to jail. I am sorry, I do not buy that.

Mr. Batchelor: I understand your feelings.

Mr. Chairman: I do not get to vote on it, but—

Mr. Mahoney: You can recall the TV.

Mr. Batchelor: There is a way out for the debtor in any case. When the debtor is arrested and taken to jail, the debtor has an option of arranging with the court to have the money delivered to the court. This is done quite frequently. Then the bailiff goes to the judge and says, "I'd like an order to release this person."

Mr. Chairman: That is fine, but that is done under the guise of the administration of justice, not some arrangement between—I appreciate your comments.

Are there any further questions? We have run out of time, actually. We appreciate you coming forward and providing your views. I think you have perhaps heard the views of some, if not all members of the committee. Thank you for coming.

Mr. Batchelor: Thank you very much.

Mr. Offer: With respect to the matter raised by Mr. Hampton about the information sheet on Hastings, I think it is fair to say he noted that the sheriff's estimate in terms of hours was zero, yet in terms of responsibility the sheriff also indicated he was responsible for security in the supreme and district courts. Mr. Hampton questioned and apparently had difficulty with that.

I would like to inform the members we have spoken to the sheriff of Hastings for a clarification of this matter. He has indicated that in his estimation there are no hours in terms of providing court security. He has indicated the X under the supreme/district column because when they see something which they feel might pose a risk to the security of the court what they do is they call the police.

That was just by way of clarification on that. It may have been some sort of a misunderstanding or whatever. I just thought that explanation, as received from the sheriff of Hastings, would be of interest to committee members.

Mr. Sterling: Can I ask a question in relation to that? I am sorry about that; it is your question.

Mr. Chairman: Is your question in relation to this, Mr. Faubert?

Mr. Faubert: Partly; but go ahead and discuss that specific aspect.

Mr. Hampton: Could you provide an explanation of Brockville, Cayuga, Cochrane, Timmins, Cornwall, Fort Frances, Kitchener and Kingston as well? Again, just going through this, I find that in many cases the sheriff has reported either zero or very few hours on security, and yet you find addenda at the bottom, or you find the Xs which indicate they are in fact providing court security.

I have trouble rationalizing the hours reported with the duties that are listed. I also find in a couple of them the comment that this whole matter of what is security and what is not security should be clarified. Without some kind of explanation, I find it very hard to produce any sort of rational conclusion from these reports.

Mr. Offer: I think Mr. Peebles would like to provide an answer at this point.

Mr. Peebles: Mr. Hampton, as I said yesterday the thing that bedevils any sort of rational discussion around this is that there are millions of arrangements that have been worked out at all levels of court that go back to the time before the province ran the court system. When we took it over these arrangements just carried on as they had been worked out.

In the specific case we were referring to, in Belleville, there is no holding cell in the courthouse so the police bring the individual in custody straight into the courtroom and they sit with him. In my simple way of looking at it, that would constitute the police providing security.

The sheriff ticked the box, since in his interpretation of his sort of broad responsibility under the Sheriffs Act as it now is written, he is assigned some responsibilities for security. He said, "I guess I have kind of an underlying responsibility to provide security, although in every respect the police are now doing it." We sort of worked out an arrangement which deals with that.

Mr. Hampton: Security with respect to prisoners.

Mr. Peebles: Yes. The things that are unclear in most cases are who actually escorts the prisoner from the holding cells, who maintains the holding cells and who sits with the prisoner while he is in the prisoner's box. Then there is kind of another order of security that may or may not be appropriate in various cases, and that is in the body of the courtroom.

Mr. Hampton: I guess the question I want to ask you, then, is whether there is another budget item which would refer to decorum or judges' attendants. How many other budget items are there?

Mr. Peebles: The sheriff has a budget which includes everything that relates to the in-court staff he provides. The very largest part of that relates to court attendants, who are people you would find in any courtroom—standing at the door, the people who are looking after the jury when there is a jury involved, the sheriff's officer who sits up at the front near the judge, the deputy sheriff, and so on.

All of those things relate, in one way or another, to the budget of the sheriff. We mean to keep all of those things as part of the maintenance of order in the courtroom, which this legislation is really not intended to address. It is those aspects related to the holding cells and dealing with the prisoners who have to be brought from the holding cells up to the courtroom,

attending them while they are in the courtroom and then taking them back down again; and security, to the extent it is required, in the building.

The sheriff's budget, to come back to your question, embraces a very much larger element. Our question to the sheriffs, and the answers they have provided in the sheets you have, was: "If you are now providing prisoner escorts and are providing some specific manpower related to security, how much would you save out of your budget in terms of hours?"

They have said, in the case we were looking at earlier this morning, it would be 3,300 hours a year. That is a portion of the sheriff's budget that would be avoidable in the event of this legislation being enacted.

Mr. Hampton: This brings up a couple of other questions.

Mr. Sterling: When the question is how much will you save, would he say, "We'll save thousands and thousands of hours" or would he say—

Mr. Chairman: I think, before you continue, there are other members who want to ask questions. We have sort of gotten into question period.

Mr. Sterling: I really think this relevant to the—

Mr. Chairman: I agree, Mr. Sterling. I just want to—

Mr. Sterling: His answer on the Hastings was interesting to me in terms of the sheriff in his response—

Mr. Chairman: My only concern is to make certain every member has a chance. There are other members who have questions. We have 15 minutes until noon, so if we can move from you we will come back to you. Mr. Faubert; then Mr. Sterling followed by Mr. Kanter.

Mr. Faubert: I have two concerns, Mr. Chairman. It is something that does not appear to be before us. I note that item six of the parliamentary assistant's letter to you talks about situations in which the Ontario Provincial Police provide police service under contract. No one has provided specifically the financial impact of this on the OPP in situations where that force may be required to extend servicing beyond that which is presently provided. I have not seen any indication we are even going to get that.

Second, who makes the decision regarding security of the courts where the OPP provides it, but it is a split jurisdiction? You have some very small municipal police forces which split security with the OPP. I count 20 cases in which that situation exists—and there are also instances with the Royal Canadian Mounted Police and a local police force. Who makes the decision, under this act, about the level of security to be provided within the courts?

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Mr. Offer: If the municipalities have contracted with the OPP to provide security, then under this legislation it would be the responsibility of the OPP because of that contract.

Mr. Hampton: Could I make a suggestion? I have a lot of questions on this because this naturally brings up what Mr. Faubert suggested. Does this mean that the OPP which currently provides security in many places are now going to dump their costs off on the municipality. I still have a lot of



questions as to the accuracy of some of the statements that were made by the sheriffs; and not just the accuracy but their understanding of what they were being asked and how their budgets line up.

Mr. Chairman: Do you want to return to this matter this afternoon?

Mr. Hampton: If not this afternoon then we ought to continue this before we do clause-by-clause tomorrow, because I think there is a lot here that has to be looked at.

Mr. Chairman: Could I find out whether or not the suggestion made by Mr. Hampton has unanimous consent?

Mr. Kanter: Several of our members may have a problem in that they just asked me if there was going to be a session this afternoon, and I said no because that was my understanding.

Mr. Hampton: I am not suggesting this afternoon. I am suggesting that tomorrow before—

Mr. Chairman: I am sure the tour of the court's facilities will not take from 8:30 in the morning until noon. Maybe we can come back after the tour and do that. Is there unanimous consent to do that?

Mr. Kanter: Those of us who are interested are here now, and the officials are here now; perhaps we could go a little beyond noon and see how far we can get at this point.

Mr. Chairman: Do I have unanimous consent for that?

Mr. Hampton: No.

Mr. Chairman: No.

Mr. Kanter: If I might: surely Howard, you should be prepared to be here until noon?

Mr. Hampton: I do not think we can handle the kinds of questions I want to ask.

Mr. Sterling: We will ask some more questions tomorrow afternoon before we start this clause by clause.

Mr. Chairman: Without unanimous consent to any of the other suggestions, that is the only way we can do it. I take it I do not have unanimous consent for any of the suggestions that were made. That is what we will do. We will go until noon and then adjourn until 8:30 a.m. tomorrow when we will gather in the front hall, where you will find a rope with Chips Ahoy cookies at one end and whatever else at the other, prepared to tour the courthouse.

Okay, go ahead. We had Mr. Faubert. Are you finished?

Mr. Faubert: I have looked at the questions and I am just asking whether we will be provided—

Mr. Chairman: If members want to ask their questions, the parliamentary assistant, between now and tomorrow, can prepare answers in writing or whatever; that may be an easier way of doing it.

Mr. Sterling: The response of the sheriff at Hastings interested me, because what he said was that he did not put anything down on his sheet with regard to security, yet his response indicated that part of his function was a security concern. He said, or these were your words I believe, that if he recognized the problem then he would get hold of a police force or he would take some action.

With regard to this particular bill, as I read it in terms of your letter, that responsibility now becomes a responsibility of the local municipal police force. Does the local municipal police force then have to assign somebody to the role the sheriff has been playing in the past; that is recognizing when in fact the problem is arising and taking action? That is my greatest concern with regard to dumping this off on a local police force.

My view of a sheriff is that he is concerned about the courthouses in his county, his region or wherever he is. He is concerned from an administrative point of view that when the public comes in there they are dealt with properly, and when jury people come in for duty they are dealt with properly. If he gets a hint or a scent of a problem with regard to security, then he takes some action. He talks to the judges or the people who are involved. In other words, in the past he has been sort of the chief pooh-bah with regard to how things are going on.

Now the Ministry of Government Services is involved with the cleaning and maintenance of the building and all the other things in that area, but the sheriff probably even hears about problems of this nature and takes some action. The same applies to the registry offices in the courthouse, the sheriff usually acts as a broker with regard to any problems in that area as well.

I just wonder, when you say in this bill that security is no longer his—the sheriff's—concern and yet you talk about decorum, I guess that is where my general concern about this kind of legislation lies: Is not the sheriff the guy or the woman who should, in fact, be the one involved, because of their rub with all of the other areas of activity? I think that is where the mistake in the legislation lies.

Mr. Hampton: Could I follow up on that, so that you can answer both of our concerns at the same time?

Mr. Kanter: Sure.

Mr. Hampton: It sounds to me as if what is going to happen, at the very least, whether you are talking about Gore Bay or Hastings or Fort Frances, is that the police are now going to have to keep somebody at the courthouse full-time to follow all this stuff. If they do not, I think they really do leave themselves open to some sort of civil action for being negligent. If you do not have somebody there watching over whether security is necessary or not, and that is your responsibility, I think you are right out the door.

What about the police department in my home community? I think their natural recourse would be: "We have to hire somebody full-time at the courthouse to oversee the security function that used to belong to the sheriff. If they feel that there is a need for us to send over extra officers, then we must send over extra officers." If they do not have that person there, how can they fulfil even a first step in that duty?

Mr. Runciman: I thought we were just going to ask questions.

Mr. Chairman: Basically I think we should, because there is very little time left. Mr. Kanter; then Mr. Runciman for a question.

Mr. Offer: So you do not want me to respond today?

Mr. Chairman: No, we will get answers tomorrow.

Mr. Offer: Okay, fine. You know what the answer is.

Mr. Kanter: My question is related to a comment made by Mr. Peebles that the sheriffs now provide attendants in courtrooms whose primary job is security, and the sheriffs will continue to provide them. I am just wondering if you could elaborate on that. Is there an attendant in every single courtroom in the province when it is session? Would that practice continue? I was not clear on how that would work and wondered if you could elaborate on it.

Mr. Chairman: I think that is a question that could be responded to tomorrow.

Mr. Runciman: I would like to hear the ministry's views in respect to the plans for regionalization of the sheriff's offices: how this proposal impacts in respect to that initiative. What are we going to see in terms of the reduction, perhaps, in terms of the need for sheriffs if this bill goes through, and how is that going to impact on that whole plan of action?

Mr. Chairman: I will leave that up to the parliamentary assistant. I am not sure that it is specifically related to this.

Mr. Runciman: I think it is.

Mr. Chairman: I will leave it up to him.

It is 12 o'clock. Before we adjourn, though, I would like to get some clarification in light of this new wrinkle that there are questions being asked and responses expected from the parliamentary assistant. We had originally not intended to sit on Friday. We have a few things that have now caused a logjam which may result in us having to sit on Friday. I want members to be aware of that so if they have planned anything else they will know that we are, subject to unanimous consent or a carried motion on it, going to have to sit to finish clause-by-clause.

Mr. Kanter: I could sit on Friday. It is probably less inconvenient for me in some ways as a Metropolitan Toronto member than for some others. Would it be possible—and I appreciate there are some questions to be answered tomorrow afternoon—to consider extending our sitting tomorrow afternoon to try and deal with both questions and clause-by-clause so that members would have Friday free? Is that a possibility?

Mr. Chairman: I suppose that anything is possible with unanimous consent of the committee. I just wanted the members to be aware that we may very well have to sit on Friday. We could take that option or some other option.

Mr. Kanter: I am suggesting that as an alternative.

Mr. Chairman: Maybe that is something we can address. I have simply done what the clerk suggested I do so we do not find ourselves surprised on Friday.



Mr. Sterling: I am not prepared to agree to extend tomorrow until we are there.

Mr. Chairman: That is why I say let's leave that and play it by ear. As I say, I just wanted everybody to be aware that we might have to go into Friday unless we come up with some other reasonable alternative for getting the bill—

Mr. Sterling: Are we scheduled to sit on Friday?

Mr. Chairman: Actually, when the subcommittee discussed it we did discuss Friday. We discussed Monday to Friday.

Mr. Sterling: If we do sit Friday, Mr. Hampton and I have had a brief, informal discussion, and if we finish this particular bill, at that time we would like to discuss the Henderson report briefly. We are getting a lot of telephone calls on it; that is the one dealing with the pay for provincial court judges.

Mr. Hampton: And working conditions.

Mr. Sterling: I know that is not on our agenda, but we would like to ask the committee at that time to discuss it briefly; maybe not go into it in total but at least have some preliminary discussion.

Mr. Chairman: We can decide at that time whether we will do that.

Mr. Sterling: I just wanted to give other members—an if you want to bring the report along—

Clerk of the Committee: Could I just ask that any member who is not going to be travelling to the courts tomorrow morning—

Mr. Chairman: The clerk is ordering the cookies and she wants to have an accurate number.

Clerk of the Committee: I need to know how many. If you will not be going or will be going on your own, could you please let me know before the end of the day?

Mr. Chairman: We stand adjourned until 8:30 tomorrow morning in the front hall.

The committee adjourned at 12 noon.



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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE  
POLICE AND SHERIFFS STATUTE LAW AMENDMENT ACT  
THURSDAY, MARCH 9, 1989





STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Faubert, Frank (Scarborough-Ellesmere L) for Mr. Chiarelli

Smith, David W. (Lambton L) for Mr. Mahoney

Clerk: Deller, Deborah

Staff:

Revell, Donald L., Senior Legislative Counsel

Witnesses:

From the Ministry of the Attorney General:

Offer, Steven, Parliamentary Assistant to the Attorney General (Mississauga North L)

Peebles, D. Ross, Assistant Deputy Attorney General, Courts Administration

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Thursday, March 9, 1989

The committee met at 2:28 p.m. in room 228.

POLICE AND SHERIFFS STATUTE LAW AMENDMENT ACT  
(continued)

Consideration of Bill 187, An Act to amend certain Acts as they relate to Police and Sheriffs.

Mr. Chairman: I recognize a quorum. There is absent, however, a member from one of the parties, the third party. Mr. Hampton, you had asked some questions of the ministry. Perhaps in the interim while waiting for a member to come, we could use this time for the parliamentary assistant to answer those questions. Okay? Are you there? Oh, okay.

Mr. Hampton: Mr. Chairman, I think you have been in the chair so long now that you demand direct recognition all the time. What is this? Must we bow? Is this a court of law now?

Mr. Chairman: When I arrange for cookies, I figure that deserves some recognition. Mr. Offer.

Mr. Offer: I am not certain whether the questions we had posed were posed just by Mr. Hampton or also Mr. Sterling, but I think one of the questions posed was, will the police have to keep someone in court at all times under this legislation? The response to that is no.

There was a question that was posed, I believe by Mr. Runciman, in terms of regionalization and the sheriffs. On that, I would like to defer to Mr. Peebles, the assistant deputy Attorney General, courts administration.

Mr. Peebles: The matter of regionalization is a much broader, more general issue than the narrower issue we are dealing with here. As the Attorney General (Mr. Scott) said in his speech to the Legislature when this was announced, regionalization is really a reorganization internally of our structure. It will allow a framework to be developed that will make possible other as yet unannounced court reform initiatives.

The organization at the moment is extremely unwieldy and it makes our lives difficult trying to manage within it. It really is quite unrelated to the legislation before the committee.

Mr. Hampton: Since I did not ask the second question, I will not respond to it, but I want to take issue with something Mr. Offer said. Although I forget the name of the gentleman name who conducted us on the tour this morning, the point he made at the end of the day, after we had come out of the courtroom, was that he himself has had instances where judges have simply said: "I do not find adequate security here. I adjourn court." The supervisor of court security, who I understand is a full-time police officer with the Metropolitan Toronto Police department, has been called on the carpet and asked to show reasons why he should not be charged with contempt of court.

It seems to me that what we saw this morning lends rather direct evidence to the claim that resolving this issue of court security is simply not a matter of passing a statute. Judges insist, whether by tradition or by statute—I suggest to you that tradition is probably more on their side and would probably be very hard to overcome—that they have control over the courtroom and that they are the sole and strict authority in the courtroom. I suggest that is really at the root of this problem.

The judiciary has complained to the Ministry of the Attorney General over and over again about the lack of court security in some courtrooms in the province. The Ministry of the Attorney General, whether because of the confrontational nature of the Attorney General himself or because it lacks the funds or for whatever reason has been unable to deal with that problem.

I do not see how simply passing a statute saying it is now the responsibility of local police forces is going to resolve the situation. Judges still feel they rule the courtroom and they have the power and authority to require whatever security they deem necessary in the courtroom. If they do not get it, they can resort to adjourning court.

To simply throw it into the hands of the municipal authorities and say it is now their responsibility and then say to us, "They do not have to have someone at the court all the time; it is totally within their discretion to do what they want," to me misses the point and misses the whole altercation that has been documented by Mr. Justice Zuber and by the Chief Justice of the province over and over again. It tries to solve a problem by pretending a problem does not exist.

So I ask you again, how can you say, in view of what was said to us today, that you know a municipal police force would not be required to have someone at the court if the judge in that court orders it shall be so? How can you say that?

Mr. Offer: I will be more than happy to respond to that. The question you posed was, under this legislation, is it necessary for police to have someone in the court? My response was, under this legislation, the answer is no. Now, you may wish to read things into this legislation and that response as many times as you want, but the fact of the matter is this legislation states that those persons who are responsible for policing functions have the responsibility for making the decision as to how—

Mr. Hampton: No, they have the responsibility of ensuring.

Mr. Offer: —courtrooms are to be secured. That is what it says. What that decision is rests within their discretion. You may wish to read into that answer as many things as you want, but the fact of the matter is the legislation just does not bear out what you are saying.

Mr. Hampton: Let's take your scenario.

Mr. Offer: Let the record show that there was no scenario in my response. The response used by myself was what the legislation happens to say. If you want to now use a scenario, feel free to do so, but please do not indicate that I have used a scenario. My response was just based on what the legislation says.

Mr. Hampton: Then let me base a scenario upon your interpretation of the legislation. You say the police are charged with ensuring the security of



the building, the security of the judges, the security of the prisoners and the security of those who may attend at the court. Where does it get us if the police deem that only one security officer is necessary and the judge comes in and says: "We need two. I am not proceeding with court. I adjourn court"? Where does this legislation then address the security problem that we have now in courtrooms and that we would have, I suggest to you, under that scenario?

Mr. Polsinelli: Are you perhaps implying that the responsibility for court security should lie with the judges? Ultimately, it has to lie with someone. Are you suggesting then that perhaps judges should be responsible for court security?

Interjections.

Mr. Faubert: Just on a matter of procedure at this point, can I direct a question to Mr. Offer for purposes of clarification on the point that was just made?

Mr. Chairman: Sure.

Mr. Faubert: It would seem to me pertinent directly to the interpretations raised by Mr. Hampton, or am I required to ask Mr. Hampton a question?

Mr. Chairman: You can ask anybody but me a question. I do not have any answers.

Mr. Faubert: To Mr. Offer then, Mr. Hampton raises an interpretation of this, which I understand clearly is not the intent of this legislation nor does it say it. We have seen other witness appearing before us also raise the same interpretation. It seems to lie with the wording of subsection 57a(1):

"A board or council responsible for the policing of a municipality has the following responsibilities, with respect to premises where court proceedings are conducted:

"1. Ensuring the security of judges and of persons taking part in or attending proceedings."

While it is implied that it lies directly with the police, it is not stated explicitly. I just wonder whether it would help to suggest that it could be stated there explicitly to the satisfaction of the police, the board of commissioners of police or whoever is determining that. Does that tighten that up too much?

Mr. Offer: In response to your question, I do not know if that is what Mr. Hampton—

Mr. Faubert: Mr. Hampton was raising the scenario, not you. Mr. Hampton was raising the scenario, and this was reinforced by a discussion we had this morning, whereby the superintendent in charge of court security said that he has been in dispute with judges about the amount of security within the court. He does one of two things, because the judge has the right to call him for contempt, but in many cases it is negotiated. This appears to clearly lay the responsibility on the police, but the interpretation could be the other way. As Mr. Hampton says, to the satisfaction of whom, the judge or

whom? I know it is intended to be the police but it does not specifically say that.

Also, as was pointed out earlier, it may be a defence then. If some judge would lay a charge of contempt on the superintendent of court security—I could not imagine that, but if he did—there it is; it is explicitly laid out in the legislation.

Mr. Offer: It is the intent of this section that the persons or groups responsible for policing have the responsibility of making that decision in terms of court security. I think that is what you were getting at, whether that is the intention of this legislation, and it is absolutely the intent of the legislation.

Mr. Faubert: The point is that it is implied and it leaves itself open to another interpretation, as we have seen by previous witnesses. I just wonder if it could be clarified.

I understand the intent and you understand the intent, but it seemed that other witnesses did not understand the intent. Mr. Hampton raised the particular situation where there could be a misinterpretation of the intent.

Mr. Sterling: Why do we not ask legislative counsel? They are responsible for drafting the legislation. I have difficulty, particularly with that clause in itself. In my view, it squarely dumps the responsibility on the police for ensuring safety in the courtrooms, but does not say who is in control of making the decision about the level of the security. I know the parliamentary assistant has written, in a letter to us in response to a submission we had earlier this week, that in his humble opinion, and I will give him the benefit of the doubt about being humble—

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Mr. Faubert: Now, now.

Mr. Kanter: Compared to some of us around here—

Mr. Chairman: We are all humble.

Interjections.

Mr. Sterling: It is a practical problem we are faced with here. As the members of this committee found out this morning—from talking to two of them at least—the fact of the matter is that in a courtroom the judge has control over what happens. Why not include include security?

Mr. Chairman: Why do we not inquire of legislative counsel right now? Do you understand the difficulty? The difficulty is that we have been told by delegations that even though we are giving them the responsibility of ensuring safety, the judge himself or herself could determine that they have not reached whatever that criterion is, and that if they refuse to do it, they can find themselves being held in contempt.

Mr. Revell: I am afraid I am just not in a position to answer that question at this time.

Mr. Sterling: If we cannot get an assurance from legislative counsel it is that way, I suggest we adjourn until we find out what the real answer is.

Mr. Chairman: Let's wait just a second.

Mr. Hampton: Mr. Chairman, if I may, even in the Anderson report this is referred to. In canvassing the problem—

Mr. Chairman: What report?

Mr. Hampton: This is the report we are not supposed to see because it deals directly with the issue.

Mr. Chairman: How can you read from it?

Mr. Hampton: One of the comments—

Interjections.

Mr. Chairman: Go ahead, Mr. Hampton. Do not let Mr. Farnan interfere with your questioning.

Mr. Hampton: On page 12 of the report one comment made is, "Perceptions of security needs vary among judges, police and administrators." That is the crux of the matter. To simply say, "We assign the problem to the police," when judges, administrators and police cannot agree, yet judges may have final authority in the courtroom, seems to me to be begging the issue to the nth degree or trying to hide the issue or trying to ignore the issue.

Mr. Kanter: I guess this is more in the nature of a comment than a question, but it seems to me that the depositions we have heard and the material we have had before us, and also the visit this morning, indicated that there have been some times—I do not know how frequent these are and I take it they are much more the exception than the norm—when there have on occasions been disagreements about the level of security required. At the moment, as I understand it, these disagreements may be between judges and administrators, as represented by sheriffs and the police, who in fact provide security in the bulk of Ontario courtrooms today.

As I understand it, what this bill would do would be to reduce the number of parties involved in that decision by having the police responsible. Clearly, they would be the people responsible. Judges could make requests and state their views on occasion, but it seems to me it would clarify and make simpler some of the problems of split jurisdiction and that kind of thing that we now have.

I was thinking of the analogy of these committees. Generally speaking, they are pretty peaceful. I am not suggesting we are in as much danger as some of the folks down at old city hall or some other place, but on occasion we may feel there is some danger here and I think the clerk or the chairman might call on the Ontario Government Protective Service from time to time, if we were hearing something particularly inflammatory, and the police would be providing security when required.

Mr. Chairman: We have a problem now, I think.

Mr. Kanter: Pardon?



Mr. Chairman: Go ahead.

Mr. Kanter: Sorry, Mr. Chairman, I did not expect to be interrupted by you.

While I can appreciate the comments of both opposition parties, it seems to me that there may well continue to be differences of opinion as to the level of security required. Who is going to make the call is pretty clear; it is going to be the police. It has been confused for many years in Ontario. From what I read in the Metropolitan Toronto Police brief, it was confused in other provinces, and I think this legislation will make it clearer. That is my understanding of how it is going to work.

Mr. Sterling: What is going to happen when people are in a court and the cops say, "We'll give one armed officer for the judge," and the judge says: "No bloody way. These are dangerous people we are dealing with and I want three guys in here, three big cops who are armed, and there isn't any court until that happens"?

Mr. Kanter: I think you should probably redirect that question to Mr. Offer. My feeling is that it would be resolved in a roughly like manner as now, except there would be two parties to the decision instead of three, and ultimately it would get resolved. I think you should direct that to the parliamentary assistant.

Mr. Sterling: Under the present situation, it ultimately becomes the province's responsibility to react.

Mr. Kanter: As I understand it, in this legislation it would be the responsibility of the local police, who I think are generally more knowledgeable in terms of security.

Mr. Sterling: What you are doing is shifting the responsibility.

Mr. Farnan: The bill is really very clear. The one thing that is clear about the bill is that the government wants to get rid of its responsibilities. I think that is the one thing that everybody agrees is absolutely clear. The government wants to take a responsibility and dump it on to municipalities, which do not want it.

The other thing that is apparently very clear—and I think Mr. Faubert put his finger on it again today. He seems to have a very good insight into the legislation. He was able to point out that there are areas of ambiguity and areas of contention as to whose responsibility it is. One has to admire a government member who has that kind of nonpartisan approach to legislation, who comes to the committee with the best interest of providing meaningful legislation and legislation that will actually work.

It is extraordinary to me. Mr. Offer was present this morning when we heard the head of the security at the courthouse tell us that indeed there had been differences of opinion between the judge and himself as to the level of security. The legislation does not help clarify that. I suggest that Mr. Kanter is avoiding the issue when he says that now it is only two levels, only two individuals will barter over whose responsibility it is. It strikes me as a rather inadequate approach for the member for St. Andrew-St. Patrick to take to suggest that this legislation is good legislation because now the ambiguity is between only two people who might have the responsibility instead of three.

Surely to goodness when we sit down to draft a piece of legislation, we say, as Mr. Faubert was suggesting, "Let's try to define, let's try to pinpoint exactly where the authority will lie as to levels of security." I think we all know that we really will not get away from the third level of responsibility. He who pays the fiddler calls the tune, and ultimately what this legislation is doing is passing on the financial responsibility to the municipalities.

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The evidence before the committee was that the municipalities would have to pay increased taxes and increase their mill rate in order to support the implementation of this legislation. If we think for one moment that these municipalities are simply going to have a situation where there is really no cap on just how much the mill rate could increase vis-à-vis levels of security—and that is really what we are talking about. If, for example, the judiciary in one jurisdiction defines a higher level of security as being necessary, then of course the taxpayers in that jurisdiction will have to respond with a greater tax commitment to that level of security.

So it appears to me that we go back now to Mr. Sterling's suggestion, and it is a good one, that until the government can clearly state what it is—

Mr. Chairman: Mr. Farnan, I am going to interrupt you for a second.

Mr. Farnan: That is unfortunate, because I was just getting wound up.

Mr. Chairman: Well, I kind of thought that. I was just inquiring whether that was one of the questions that Mr. Hampton asked. We were dealing with that because you gentlemen were not here yet. We were waiting for you so we could start clause-by-clause. We are really into the clause-by-clause, and I wonder if we could start by doing that. You can then carry on in full flight with what you are saying, but we will be doing it within the framework of what we have supposedly set this time aside to do, clause-by-clause. It does not matter. It gets the thing on the floor and I think it allows—

Mr. Kanter: I think that is exactly what we have been doing.

Mr. Chairman: All right. What I am going to ask then—

Mr. Farnan: Then I will wind up my remarks by saying that it strikes me that, despite the conversation we have had about the inadequacy of the legislation to achieve any kind of reasonable solution, we are going to proceed. That strikes me as not making much sense at all. I think Mr. Faubert was right, and maybe he will support those amendments that will give precision to who should have the authority to determine levels of security.

Mr. Hampton: There is one other thing that, I think, comes out of this discussion we have had. Last day, remember, I raised several questions about the cost estimates that had been sent in by sheriffs as to how much of their budgets were allocated towards costs of security. I mentioned the municipalities and I asked if you could check into those cities.

I believe I listed Kenora, Cornwall and Brockville, because in all of those the estimate for security was zero or close to zero, yet at the bottom of the page the sheriff would write: "We are responsible for security in part



of the provincial court, we are responsible for security in the district court, we are responsible for security in the Supreme Court."

How can you write zero? I raised the question of whether there were more than three or four budgets or if the budget was divided into three or four sections. The level of security that must be provided bears heavily on the cost and bears directly on the cost. It seems to me that there is no way of getting around that. I found the estimates submitted by the sheriffs to be not very convincing and, quite frankly, in some cases confusing.

So I went back last night to the Anderson report. On page 11, the Anderson report says: "Summary of Court Security Costs." It says, "Based on the assumptions outlined," after he had gone through the detailed discussion about costs, "the total cost of providing court security in the province is estimated to be no less than \$20 million per year. This does not include municipal grants which were already calculated in."

On the one hand, if we take the figures that the sheriffs are using, they say, "Well, we don't do much security work, anyway; our budget is zero," but at the bottom of the page they say, "But we do do security work in these courts in our town or in our municipality." Then I see General Anderson has been through the whole system and he says it is going to cost \$20 million. Again, I have a real problem figuring out who is what here and why. Yet the two bear directly one on the other.

Mr. Chairman: Mr. Hampton, what I had indicated to Mr. Farnan is that I am wondering if we can do this: have unanimous consent to stand down section 1 for the moment and deal with the balance of the bill and any amendments thereto. Then we will come back to section 1 and you can debate section 1, as you have, and continue to do so.

The rest of the bill really does not, in my humble opinion, have any direct bearing on section 1. Can I have unanimous consent that we move in that fashion? Is that agreed, because we are trying to deal with it today and it is my understanding that no one wants to come back tomorrow. Is there unanimous consent that we deal with it in that way?

Interjections.

Mr. Chairman: Is that a yes?

Mr. Farnan: I wonder, Mr. Chairman—

Mr. Chairman: Just a second. I just want to deal with this first, whether or not we can have unanimous consent to deal with it in that way.

Mr. Farnan: The answer is no. I do not think there is unanimous consent. I think to suggest that there is unanimous consent that we deal with a bill as important as this in one afternoon, given the seriousness of the delegations that we have heard from municipalities and police forces—

Mr. Chairman: That need not be the case, Mr. Farnan. We have tomorrow as well to sit if we wish to sit.

Mr. Farnan: I want to make it quite clear from the point of view of the New Democratic Party that we are certainly prepared to sit on this for as long as it takes to get the best possible legislation.



Mr. Chairman: You have made that clear then. Perhaps I misread some of the things I have heard from members here that we could deal with it today. But I am not putting a time limit on; all I am saying is that from the standpoint of a housekeeping matter, we can deal with the ones where there does not appear to be contention and then get back to the issue where it obviously sounds like there is contention. Do we have unanimous consent to deal with it in that way or shall we just do it the usual fashion?

Mr. Hampton: Section 1 is clearly the contentious one at this point in time.

Mr. Chairman: All right, can I ask, are there any questions or amendments to this bill and, if so, to what clause? First of all, I should ask whether we have unanimous consent to stand down section 1. Is that agreed?

Mr. Sterling: I am sorry. I do not know if the other sections tie in with section 1. Do you not have to deal with section 1 before you deal with any part of this bill?

Mr. Chairman: No, it is my understanding that we do not. Just wait, we are trying to get an answer on that and perhaps you at the same time could satisfy yourself as well.

Mr. Offer: I just want to get a clarification. It was my understanding that the sections following, in other words section 2 onwards, do not have any bearing on section 1 except that it might be that our amendment, as circulated, may have some bearing on section 1. But apart from that, it is my belief that nothing else would impact on section 1.

Mr. Sterling: What about subsection 2(2) of the bill, where it says, "Section 16 of the said act is repealed"? You are dealing with the Sheriffs Act there, are you?

Mr. Offer: Yes, we are.

Mr. Sterling: Section 16 of the Sheriffs Act, which we are repealing, says, "The sheriff shall give his attendance upon the judges for the maintenance of good order in Her Majesty's courts, and for doing and executing of all other things that appertain to the office of sheriff in such case."

Mr. Offer: No.

Mr. Sterling: Is that not what we are talking about in section 1?

Mr. Offer: My response would be that sections 16 and 17 really do relate mainly to the court attendant type of function as opposed to the court security type of function, and as such, they are not related to section 1. But let me say that is my opinion on this, and members might feel there might be some connection in some way. I do not believe there is on that basis or in fact on any of the sections that follow.

Mr. Chairman: I have just spoken with legislative counsel, and five minutes might be of some assistance.

Mr. Sterling: A five-minute recess?

Mr. Chairman: Let's make it till 3:10 p.m. Agreed?

Agreed to.

Mr. Chairman: We stand adjourned until 3:10 p.m.

The committee recessed at 3:01 p.m.

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Mr. Chairman: We seem to be lacking some members.

We are back in session. You should have before you a proposed amendment. I am distributing it at the moment just so you can take a look at it. I understand you have one as well, Mr. Hampton.

Mr. Hampton: I had asked a question yesterday about the estimates that have been turned in by the sheriffs. I had raised it earlier and during the break, personnel from the Ministry of the Attorney General explained to me that they did have an answer. I would like to have that answer on the record, if I could.

Mr. Chairman: All right.

Mr. Peebles: The information that we have distributed to the members of the committee has been gleaned from a survey that we have done that was completed by the sheriffs. Where the confusion arose was in those few places where the indication was that there were no hours to be saved by the implementation of this legislation. At the same time, there was some reference to the fact that the sheriff had a responsibility for providing security.

Part of the difficulty the sheriffs had in responding to this lies in the rather unclear line of authority and responsibility for security, and they interpreted the question incorrectly.

In all of the places where that apparent paradox occurs, we have checked with the sheriff and in each place it is the police who are now providing the security, and the sheriff was slightly confused about his role in terms of courtroom decorum versus security. But we have confirmed that there are no hours to be saved and no work that is being done by the sheriff that will fall to the police.

I hope that helps to clarify how that occurred.

Mr. Hampton: In response to that, I want to ask about that \$20-million figure that General Anderson mentions. He says this is what it would cost or what it costs to provide adequate security in the courtrooms. Where does that figure come from?

Mr. Offer: I would like to inform the member that we cannot respond to that question—because you have referred to a document—we know that we had this matter dealt with earlier—that to respond, in many ways, with that decision made earlier in terms of its confidentiality—we have indicated, in our opening statement, some of the options which were available and why we chose what we chose in terms of this legislation. I would hope that the member would understand that.

Mr. Sterling: Let us put it another way. We have heard many

delegations come here and allege that the cost of security is going to be at least \$20 million. It could be \$20 million or \$12 million depending on what kind of personnel is supplied, and that may be give or take 10 per cent on those figures. Why is there a discrepancy between what those people are saying and what your sheriffs are saying?

Mr. Peebles: At the beginning I tried to set out the difficulties we had around our own estimates of costs. I said that what we could provide were hours that the sheriffs felt they would save through the passage of this legislation. That is about as much as I can provide in terms of the situation as it exists. You can kind of come up with a rough cost estimate, but in matters of security and decorum as we now have them, and as the functions provided by the sheriff are so mixed up, it is difficult to sort of come up with any kind of accurate costing.

In respect of the forecasts of costs that have been provided by the municipalities I really cannot comment. Certainly, as Mr. Sterling has pointed out, it is not consistent with the estimates that the sheriffs have provided about how much they are providing in those places where there would be some transfer of responsibility. I really cannot go beyond that.

Mr. Sterling: I will tell you that during the hearings I fluctuated between feeling that at times there were exaggerations on the part of delegations as to the costs and with regard to the Attorney General, an underplaying of the costs that would be taken on by the municipalities. But I guess—after hearing what had happened this morning, in terms of a clear statement by people who were actually on the ground and dealing with court security—that in fact the judge is the guy who calls it because notwithstanding whatever this piece of legislation has to say, if a judge threatens to close down the courtroom and the police have a number of witnesses there, they have a high investment in the trial proceedings and they are going to probably buckle to the wishes of the judiciary in most cases.

I am not so certain that the estimates by the municipality as they go on are in fact exaggerated, because I think what has happened here—and it may become more crystal clear as we go along—is that the judiciary have complained to the Attorney General that security in our courthouses is not enough, that it is not good enough.

Every witness that was asked a question by myself or my colleague or the other opposition party indicated that he did not see a problem with the existing level of security.

What seems to have happened is that you have created a piece of legislation which has the idea that it is giving the police the responsibility for providing security and calling the shots, but in fact what is going to happen on the ground is that the judiciary, which is demanding additional security, is going to get it, because it has the ultimate control over the courtroom. The Attorney General (Mr. Scott) is going to slip out the courtroom back door and the leave the local police facing the judge and taking the brunt of the cost of providing that.

Mr. Chairman: Have you seen the proposed amendment, item 4?

Mr. Sterling: Yes, I have. I think it helps make clearer in the legislation who supposedly has, in writing, the discretion to call the shots, but I am not sure that is going to change one iota what happens in a courtroom.



Mr. Chairman: At least it may prevent proceedings by way of contempt, which seem to be of concern to the police.

Are there any comments, questions or amendments to this bill, and if so, to which clause? I would like you to shout it out, as it were.

Mr. Hampton: Are you proceeding differently than I understood you were going to proceed before? Are we dealing with section 1?

Mr. Chairman: Yes, since we did not get unanimous consent to stand it down.

Mr. Hampton: In view of the comment that was just made by the parliamentary assistant to the Attorney General regarding the fact that he is not going to answer any questions—he will not respond to anything that comes out of the Anderson report. In my view, the Attorney General may wish to keep the report confidential, but there should not be anything stopping us, and I am not suggesting there is, from raising issues that are found in the Anderson report and asking the parliamentary assistant to respond at least to those issues.

We are not asking him to disclose a specific piece of information; it is the issue that we are after. The Anderson report raises several issues. It raises several questions about court security, about financing, about responsibility and makes some recommendations.

Provided we do not ask for some specific piece of information, I do not see on what basis the parliamentary assistant refuses to answer questions about those issues. Is this censorship by the Attorney General? The Attorney General refuses to answer questions on issues that pertain to this legislation.

Since that appears to be the case, I have a motion. Basically, the motion is that the justice committee reserve clause-by-clause consideration of the bill until those groups and organizations that have appeared before the committee have the opportunity to obtain copies of the Anderson report, study the contents of the report and make written submissions on it. If the Attorney General will not discuss it or will not discuss issues that come out of it, then I guess we will have to go the other way.

Mr. Chairman: I would like to see your motion, but it sounds very close to the one that was defeated by this committee. I would have to consider whether or not it is in order, first. You have moved that motion. Let me just take a look now. Do we have a copy of the other one? The earlier motion was, as I recollect—

Clerk of the Committee: I can read it out.

Mr. Chairman: All right. The clerk will read it out.

Clerk of the Committee: Previously, Mr. Hampton had moved on March 7, "That the justice committee ask the Ministry of the Attorney General to make copies of the Anderson report available immediately to all individuals and organizations appearing before the committee on the subject of Bill 187." Mr. Farnan subsequently moved that the motion be amended by inserting "all committee members and" after the words "immediately to all."

Mr. Chairman: Subject to consultation with the clerk, perhaps, it would be my view that although the wording is different, the motion itself

generally refers to the same subject matter that formed the basis of a motion that was defeated by this committee, and I so rule that—

Interjections.

Mr. Sterling: If you think that this motion has anything to do—

Mr. Chairman: Just a second. As I understand my obligation, the first step is for me is to rule whether the motion is in order or out of order.

Mr. Runciman: Mr. Chairman, are you prepared to listen to arguments with respect to that before you make your decision?

Mr. Chairman: I would do that if I considered that the wording was not clearly of the same content as the first motion, because I think that under those circumstances if I had a doubt I would be obliged to do that. But in reading the motion, it is worded differently but it deals precisely with the same content, in my humble opinion, as the first motion that was defeated.

I will tell you what. In light of the fact that this motion has been placed before me by Mr. Hampton in the middle of the hearings, I would like five minutes to think about it before I make that judgement.

Mr. Polsinelli: Before you make the judgement, may I suggest that as soon as that decision is made we proceed to clause-by-clause debate of this bill? We have already spent an hour and a half on general discussions. If I have to make that a motion, I will make that a motion. Any arguments that have to be made can be made when we are dealing with the clauses.

Mr. Chairman: I would like to deal with one motion at a time, Mr. Polsinelli. If you choose to move that motion you may be very close to a— We will wait. Make it 10 minutes just to be safe: 3:40 p.m.

The committee recessed at 3:30 p.m.

1540

Mr. Chairman: We are back in session. Your humble chairman is here to eat crow, as it were. I am sure everybody wants to come in and hear that.

Mr. Hampton: That won't be necessary.

Mr. Chairman: Come on in, there is a big event taking place. The chairman is eating crow. Is everybody here?

Mr. Offer: I wonder what the decision will be?

Mr. Chairman: Is everybody here for the free fall? I have checked with the clerk, whose judgement is always exceptional. I probably should have accepted her advice. I have now checked with Smirle Forsyth. He agrees that this motion, although it deals peripherally with the similar facts—before, we were asking the Attorney General for the release of the report. This is simply a motion by Mr. Hampton to delay the consideration of the clause-by-clause until the committee has the opportunity to obtain copies of the Anderson report, study the contents of the report and make written submissions on the implications of the report.

I would like to scratch out my original ruling, and the motion is on the

floor for debate, if you wish, although I think the nature of it is pretty clear.

Mr. Hampton: I want to say a few words, because I made some of these remarks earlier, although in a different context.

It is one thing, I think, for the Ministry of the Attorney General to say, "This report is classified or it is confidential, and therefore we do not want to release it." That is one thing, and I gather an ultimate decision will be made at some point down the road as to whether or not it is within the authority of the Ministry of the Attorney General to do that, in terms of the Freedom of Information and Protection of Privacy Act.

But it is another thing for someone else to raise questions and issues that come out of that report, or may have come out of it, and ask the Ministry of the Attorney General for answers to those questions, and for the Ministry of the Attorney General to refuse, because no one could deny that the issues that are raised in the report bear directly on the decisions we are trying to make here.

Just to illustrate that, I want to go through just a couple of salient sections to illustrate how germane the issues are.

Mr. Chairman: Mr. Hampton, I do not want to interrupt you, but the nature of your motion is to delay consideration of clause-by-clause, and I am not certain whether what you are about to do has any direct, relevant bearing on that. I would confine you to the motion that is on the floor, particularly since this may be sort of doing it backwards, and you and Mr. Sterling are the only two members who have a copy of that report.

Mr. Farnan: I have a copy also.

Mr. Chairman: Well, Mr. Farnan has a copy of the report.

Mr. Farnan: We are producing more.

Mr. Hampton: What I am trying to do is establish the importance of the issues raised in that report to the questions we address in clause-by-clause discussion, especially of section 1, which I consider to be the most important part of the bill. That is what I want to establish: that the report and the information in the report—although not all the information in the report—are very important to the discussion of the issues which naturally arise out of section 1 of the bill.

I want to refer to some of those issues because, as I said, I think they are important for groups which appear before the committee. As the Ministry of the Attorney General will not respond to questions which appear to come directly out of the report, I think we ought to allow further time for the deputants who appeared before the committee to bring up the issues and respond to them. If we cannot get the Ministry of the Attorney General to respond to them, then the deputants ought to be able to have the opportunity to respond to them. I just want to give you some of the issues that should be responded to.

Mr. Chairman: Mr. Hampton, the difficulty is that this committee has already been told that the report was sought under the appropriate



legislation, that was denied and there is an appeal pending for release of that report.

Mr. Hampton: That is right.

Mr. Chairman: You and two other opposition members are the only ones with a copy of that report. I can understand where you would wish to say in general terms that the report contains information to support your argument that we should delay clause-by-clause discussion, but I would prefer that you did not refer to the specific items for the simple matter that there is no way that any other member of this committee has any way of knowing those. Not that they would not believe that what you are saying is correct, but they do not have the opportunity because they do not have the report before them. If you want to indicate in a general fashion that you feel your reading of the report is important in terms of supporting your motion to delay clause-by-clause consideration, fine, but not referring to—

Mr. Hampton: I will not refer to specific pages. I will not refer to specific sections, but I will refer to issues and ideas and concepts, if that is acceptable.

Mr. Sterling: Mr. Chairman, may I enter the debate in terms of your trying to limit him? The Freedom of Information and Protection of Privacy Act, in the application of some individual in Ontario for access to a report which the Attorney General sees fit to tuck away at this time, has no relevance to the fact that the report is now in the hands of a number of members of the public. That is a fact.

The fact of the matter is that if this motion goes ahead, Mr. Hampton and myself, or I on my own if Mr. Hampton will not do it, will see that every delegation that appeared in front of this committee has a copy of that report. I am sure that when the appeals are finished with the freedom of information commissioner, the report or a good portion of it will probably be public anyway.

Notwithstanding that, that is an issue that is way over there. The issue is that there is a report. The report is now in the hands of at least three members of this committee. It is relevant. The Attorney General has said that this legislation was based on that report. All we want to do is make sure that the people who are going to be impacted to the greatest degree in this thing have a say about this. What Mr. Hampton wants to do is refer to sections of that report and say why they are relevant. I think that is part and parcel of his motion. He wants to put his case.

Mr. Chairman: Mr. Sterling, the difficulty with that—I know this may sound like legalese or that I am trying to cloud the issue, and I am not—is that if each member does not have a copy of the report, it would be the equivalent of my having a transcript from a preliminary hearing and quoting lines. The other person would have no way of knowing whether I had quoted the full line, whether there was something down the page that explained what I had quoted and so on. I think it is unfair to the committee.

1550

There is a procedure for obtaining the documents. That mechanism has been put into place under an existing statute of Ontario that was passed by the Legislature. I do not choose to inquire how you got the report, nor do I think any member here does. The fact is that that document, for all intents

and purposes, is involved in a procedure by way of appeal under the Freedom of Information and Protection of Privacy Act.

I have no difficulty with Mr. Hampton conducting a general statement that he has read the report and he feels that, for that reason, it is important that this bill be delayed. But I do not think it is fair to the rest of the members of the committee to have him quote from it specifically and not give the other members of the committee an opportunity to say, "Well, perhaps you should read a little further down because it explains what you have just read up there."

Mr. Sterling: I have a suggestion. I have a copy of the report here and I suggest the clerk copy it for each member of the committee.

Mr. Polsinelli: I have a strong objection to that. We have a document that has been classified by the government as confidential. We are not choosing to question how the opposition members have received that document. There is a process under way to have that document made public through the freedom of information office and I do not think this committee or any member of this committee or members of the opposition parties have the right to take it upon themselves to choose to make that document public.

As a matter of fact, I think it would be bordering on irresponsibility to do that.

Mr. Chairman: I do not know whether that was a point of order or what.

Mr. Hampton, you know the reasons why it was denied access to you. Whether those reasons are correct or not is something which I suppose will have to be determined by the process that is in place. If that is what you are arguing in terms of the clause-by-clause consideration being delayed, by all means go ahead and argue it. But my reasons for restricting it to that is that I think it is a matter of fairness to the other members of the committee.

Mr. Hampton: Mr. Sterling said he will read along with me and make sure I am accurate.

As I said, if the Ministry of the Attorney General is unwilling to answer questions on issues and concepts which arise out of a consideration of this, then I think what we should do is adjourn clause-by-clause consideration and allow those groups and organizations that appeared before the committee to complete the process of trying to get a copy of the report—however they come by it; that is not an issue for me to determine—study it, and then they can bring up the issues and they can respond to the issues that have been raised in the report.

By way of illustrating how important I think those issues are, I want to refer generally to some of the questions that come out of it.

Mr. Chairman: If you are dealing with it generally, I do not have any difficulty, but if you are going to read from it—and I might be very clear that I am not questioning your integrity or Mr. Sterling's in terms of reading selective pieces—selection appears in the eyes of the beholder, and you might do it by mistake, and the other members do not have the opportunity of saying, "Read on."

Mr. Polsinelli: I would raise a strong objection to this. By sitting

here and listening to a confidential report being read out or being referred to, we are condoning the release of that report. I say that neither Mr. Hampton nor Mr. Sterling should be given that right in this committee. If they are referring to or reading portions of a confidential report that will be recorded by Hansard, I say that this committee should not condone it and I for one do not condone it.

Mr. Chairman: I have indicated to Mr. Hampton and I understand that he is going to follow that procedure: that he is not going to read from the document. He is going to give general statements from it. You cannot read from it.

Mr. Sterling, I do not know whether this issue has ever come up before, but it would seem to me that the very nature of reading from a document that is presently under appeal under the Freedom of Information and Protection of Privacy Act—

Mr. Sterling: We are not giving any—

Mr. Chairman: —let me finish—is in fact a direct attack upon the entire question of cabinet secrecy and the documents that are classified as being part of cabinet secrecy.

In fact, as I understand it, what happens if the procedure were to be carried to its fullest extent is that cabinet would no longer have the age-old tradition of being able to deal with matters in reliance that what happens in cabinet is in fact a matter of secrecy.

Mr. Sterling: This has nothing to do with minutes of cabinet.

Mr. Chairman: I will ask the parliamentary assistant to say why it is now being appealed under the freedom-of-information act, but as I read the act, and I read it just a short time ago, it is a document—

Mr. Hampton: Just to give you a precedent, on the debates on South Africa, on this government's response to South African investment, I read the cabinet document in the House. I read through the full cabinet submission. I read through exactly what the cabinet's choices were, what kinds of investment controls the government could have brought in dealing with investments in South Africa, what kinds of other options there were in terms of investment funds, pension funds. I read verbatim from the cabinet submission that was prepared by the Ministry of the Attorney General, by the Ministry of Industry, Trade and Technology and by the Ministry of—

Mr. Chairman: Had it been demanded under the freedom-of-information act and was it under appeal when it was denied?

Mr. Sterling: The freedom-of-information act has got nothing to do with it.

Mr. Chairman: Then why did we pass the act? If it has no purpose, Mr. Sterling, why did we pass the act?

Mr. Sterling: We passed the act to allow members of the public to try to get at public records like the Anderson report.

Mr. Chairman: Precisely.



Mr. Sterling: We have a government which is using the act to shield itself from producing information. Notwithstanding that, if I have the most sensitive document in the world, as a member of parliament, I have every right to read that document.

I sat through the Astra/Re-Mor hearings where members of your party, the other party and our party read into the record investigations of people who were under investigation for criminal activity which were, in my view, much more—

Mr. Chairman: Did all members have copies of that information?

Mr. Sterling: No. In fact, only some members of the committee did. It was one member from each party who had that access.

Notwithstanding that, the freedom-of-information act has nothing to do with my rights as a member of the opposition. In fact, my duty as a member of the opposition is to bring this particular document to the fore and to public knowledge. I have an obligation, as a member of the opposition, to keep this government accountable to the people for the decisions it has made. There is no other document that exists in this world that has more to do with this particular issue than the Anderson report.

Mr. Hampton: If I may continue, Mr. Chairman, I am not committing an offence under the freedom-of-information act. There is no offence; there is nothing in the freedom-of-information act that says that by reading something the government does not want me to read, I am committing an offence.

If I might respectfully submit, it seems that there is a security problem at the Ministry of the Attorney General. That is their problem, not mine..

Mr. Faubert: On a point of order, Mr. Chairman: If I disagreed with the ruling of the chair, I would challenge you on it. But I think the motion before us is so general in its implications it can really tie the committee up for ever by some of the deputations not performing or bringing a written submission before the committee.

We have no time line involved in this. The only time is a restriction of this committee from considering this legislation until each group performs what we, in effect, would be saying as a committee if we pass this motion.

I think on that basis I would like to call the question on it. I think the motion is clearly before us and the intent is clearly there. I think we should vote on it.

Mr. Chairman: Mr. Faubert, I understand what you are saying, but the rules of committee allow any member to speak in committee as often or as long as he or she wishes.

Interjection.

Mr. Faubert: The question is, if the intent is to allow someone to quote at length from any report—leaving this particular report aside—

Interjection.

Mr. Chairman: Hang on just a second. I would like to consider that.

1600

Mr. Runciman: I have a legitimate point of order, I think. That was not a legitimate point of order.

Mr. Kanter: He moved the question on that motion.

Mr. Runciman: Mr. Hampton had the floor. Mr. Faubert took over the floor on a point of order which was not a point of order and then made a motion to move the question. That is totally inappropriate. Mr. Hampton still has the floor.

Mr. Chairman: You are quite right, Mr. Runciman. Mr. Hampton.

Mr. Hampton: Mr. Chairman, have you come to a determination on this now?

Mr. Chairman: I indicated to you that I prefer that you not. I am not ruling that you cannot, but I prefer you would not. I think as a matter of fairness to the members of the committee, and I indicated my reasons, without each of them having copies of the report, it becomes impossible for—

Mr. Hampton: I have said I would be happy to provide each member with a copy of the report.

Mr. Chairman: I have said I prefer that you not do it.

Mr. Hampton: The Anderson report deals with this on a fairly comprehensive basis. It canvasses all the problems, it canvasses several suggested solutions and it canvasses the implications of those solutions. The report did this by sending out a fair number of questionnaires, I gather, to the crown attorneys, asking them for their fairly detailed impressions on court security. They have talked to police forces around the province and asked them for their impressions. Then they dealt with the issue, as I say, on a very thorough basis.

They talk about the problem of transportation of prisoners and they go through all the ad hoc arrangements that have dealt with that. They go through the problems of separation of prisoners. As you are aware, since the Young Offenders Act has come into place, there are a lot of increased costs in dealing with the separation of prisoners because young offenders must be separated from adult offenders, males must be separated from females and so on.

He addresses the issue that some of the so-called \$3-per-household grant is eaten up by the problem of transportation of prisoners into and out of the court, as we saw illustrated today at the old city hall courthouse. So the issue of the transportation of prisoners, from the perspective of the Anderson report, eats into a lot of funds and costs a lot of money. So there is that financial implication here. It is not a small one by any means.

The report then goes on to talk about the present system of court security across the province. It might not surprise anyone, but there is a real problem, even within this report, in arriving at a definition of security. Something that seems to be so easily surmised in terms of this bill is not that easily arrived at by this committee that was set up to study the

question. They had trouble arriving at an adequate definition of security. For instance, one of the issues you must consider is security of the prisoners. That is a legitimate issue. We saw that this morning at old city hall.

Another issue, which is not entirely an issue of security, is the issue of peace and good order. Someone can argue that peace and good order is a general issue for the police and therefore the police ought to be involved. Again, that kind of issue is canvassed.

Then there is the issue of special security. As we noted today, at old city hall you have instances where—whether it be a motorcycle gang or whether it be, as the gentlemen who conducted the tour said, "If we've got somebody in here who is likely to be sentenced to 20 years, that in itself creates a special security risk"—we are not just talking about one simple concept of security. There are at least three or four.

There is security of the prisoners, ensuring good peace and order and special security. Then there is just the basic security question, that is, waving the electronic wand at the entrances to either the courthouse itself or particular courtrooms. Then, above and beyond that, there is the provision of security in the courthouse on extended hours. You can even go into the question there of the construction of the courthouse.

One of the things I find a bit unnerving about this bill is that it does not refer to security officers or security guards; it says shall be responsible for "ensuring the security." As we have heard today, a large part of the problem with some of the court facilities in this province is not just manpower or staffing; it is the physical appearance and the physical construction of the building. How far does ensuring the security, as laid out in this bill, go in terms of that kind of problem, something that is not just a manpower problem but also a construction problem?

As I say, just the question of security breaks down into five or six other difficult questions. I think those kinds of questions should be addressed. How is security met? As we have heard, there is this ad hoc general overview. Sometimes the Ontario Provincial Police are involved, sometimes regular officers of the police are involved, sometimes the police have special constables and sometimes you have a combined effort, as you have at old city hall where you have sheriff's officers, you have commissionaires, you have the courthouse security unit and you also have police officers at times.

One of the things I noticed today was that there was a plainclothes policeman in the courtroom while we were there. The gentleman who was seated directly to the right of the crown counsel was a plainclothes policeman. I asked that specific question and that was the answer I was given, that he was there to fulfil an assistance role, in terms of prosecution of cases, but also in case a special security issue arose. There are all these ad hoc arrangements which, as we and numerous judges and other reports have said, are unsatisfactory.

Then there is the whole issue of the periodic grants. That is debated back and forth and I think it is one we ought to have more information on, because there are still periodic grants going on out there and there are still special agreements being signed. Quite frankly, one of the things I find offensive about this bill is that the government is going to use its executive power or its power to pass legislation to render null and unenforceable agreements it signed.



I almost wonder if that is not, in at least one sense, an abuse of the government's power, that it goes out and signs a bunch of agreements and then, after it has signed them, says, "Well, we've got a problem here, so we're going to use our legislative power to wipe out these agreements that we have signed." After they have been duly negotiated, after there has been a fair amount of dependence placed on them, the government is going to use this bill to wipe out all of those. That is addressed in the report, the kinds of ad hoc arrangements that were made and how they have worked and how they have not worked. I would suggest that some organizations might want to be able to respond to those issues.

The other question, and I suggest it is a central question to the debate we are dealing with here, is the cost. Many of the municipalities that have come before us have said, "There is a cost factor and the cost factor is a very important one." I think they ought to have the opportunity to look at and respond to some of the cost calculations. I have already mentioned what some of the cost calculations are from the government's side, and they are not unsubstantial. They are well within the ballpark figure.

1610

If I read from the brief that was presented by the Municipal Police Authorities, they suggest that the projected rate across the province if you use uniformed police officers is about \$29 million; that the projected rate if you use special constables is \$20 million. Some of that money would come back from the province, but \$20 million I think is a ballpark figure. Yet there have been remarks made to suggest that they are off base.

I would suggest that there is information in the Anderson report which indicates that they are not off base. If we consider this legislation in a clause-by-clause way without looking at that and giving municipalities and municipal police forces who will be affected an opportunity to respond to it, to me it says we are being irresponsible.

After going through all that, as you would expect in this kind of report there is a consideration of options, options for doing the job better. To me, again, that is a central issue here. What are the options in terms of a better security system? I think that is perhaps the widest issue we should be concerned with: What is the best way? Perhaps we can even do this by way of amendment once we have the information. What are the better ways to provide court security? What are the most efficient ways? What are the most effective ways?

There are a number of problems, of course, that arise when you start considering the options. One of those problems is that there is no clear assignment of responsibility or accountability that can be derived from the legislation that is out there now. There is a problem with the perception of security needs, that the court administrators may consider that security method X is satisfactory, that the police may consider that security Y is satisfactory, and the judges may disagree with both.

I do not see this legislation, as we have it now, dealing with those differences of views; I really do not. I think more light can be shed on this. I think if municipalities had the opportunity to respond to what is written in this report, a lot more light would be shed on it, and I think we could make a more responsible decision.

One of the issues that was raised in the Municipal Police Authorities

brief was that there is no uniform provincial standard or policy, no uniformity in approach in terms of court security and what ought to be offered. There is a problem with building design and age which inhibits proper security and inhibits the provision of proper security. You have leased buildings, and in many cases the landlords in those leased buildings do not provide security after hours when judges may or may not be there, even though court is not going on.

There is a great deal of security technology available, but it is quite costly to install. Do we know what the needs are? Again, I raise the question: If we take the act as it is worded now, municipal authorities shall ensure the security. Does that mean they are also responsible for acquiring some of this equipment? To me, that goes far beyond what has been discussed, and I think municipalities ought to know or ought to have a chance to canvass that question. Does it come within the purview of this act that they would, under this act, be in the position where they would have to acquire some of this sophisticated security equipment?

Last, when you start talking about options, the thing that raises its head is the question of funding. Who will provide the funds? Again, with the difficulties of definition of security, you can talk about minimum security standards. I would suggest that to throw it open to the local municipal council is simply not addressing all of the issues that are out there or simply not addressing those issues in an adequate way.

As we saw today, you have got the question of security at the door of the courthouse; you have got the question of the security in the holding area for the courthouse; you have got the question of the escort of prisoners to and from the courtroom to the holding area; you have the question of courtroom security itself, that is, the security of those entering the courtroom, and whether they have to be handled with the wand; you have the question of security in the hallways of the courtroom, and then, finally, the general courthouse security, after-hours security, security of documents, etc.

These are all issues, if I read this bill, ensuring the security of judges, ensuring the security of the courtrooms during the hours, ensuring the secure custody of the premises and ensuring the secure custody of persons in custody or who may be taken into custody. These could all come within the ambit of this bill as it is now worded. Yet I am not sure municipalities know that. I am not sure they have had an opportunity to canvass those questions and respond to them.

Out of all of this, it is necessary, and I am not sure this bill does it the way it is worded now, to nail down who is responsible for the various aspects of security. I do not see security defined in this bill. If it is not defined, how broad, how narrow is the definition? Should municipalities not have the opportunity to address that?

If, as is envisaged by this bill, municipalities are completely in charge or have the complete responsibility of ensuring the security, and all of these things can come within those rather large parameters, then we should talk about financial support for municipal police. Although municipalities had the opportunity to bring that up, they did not have the opportunity to bring it up in terms of all of the security issues that are brought up, analysed and canvassed in the Anderson report. Given the wording of this legislation again, I suggest that they might well be responsible for many of these things. You



have got the question of what kind of support the municipal police ought to receive in terms of dealing with all this.

Now out of this, you can find about four options. The Ministry of the Attorney General, in its opening submissions, canvassed to a certain extent what some of those options are, but certainly there is the option of the Ministry of the Attorney General being responsible for the policy, for the enforcement and for the delivery of security in all court facilities in the province. That is one possibility: that the Ministry of the Attorney General does it all.

Another possibility is that the Ministry of the Attorney General be required to ensure court security. I think this is the magic word, that the Ministry of the Attorney General have the responsibility of ensuring court security, that it can then pass off or delegate the delivery of the service.

They might choose to delegate it to the Ontario Provincial Police. They might then delegate it to municipal police forces. But it is a different thing for the Ministry of the Attorney General to be charged with ensuring security, and then pass off the duty of providing security guards or security personnel to someone else.

1620

Again, I think municipalities deserve the opportunity to address that question, because it is clear from the Anderson report that the meaning of the words "ensure security" can be very broad indeed. I am not sure if municipalities had the opportunity to address that and I think they ought to.

Another option would be for the Attorney General to be responsible for the policy of security and perhaps for another ministry of the government to deliver the security.

Finally, there is the possibility or the option of the province passing everything over to municipalities. That, I would argue, is what has happened here. Everything; lock, stock and barrel, not just providing security guards but ensuring security in the bigger question is what has happened in this bill. It is much broader than what most of the municipalities came here and talked about and much broader than they are prepared to accept or even have any idea that they are being asked to accept, because "ensuring security" means more than just having security guards there. It can mean much more.

Would you not know it? Not only does the Anderson report actually canvass a bunch of these ideas, it then evaluates them.

I think I have to be somewhat specific in this one way, because what the Anderson report says, in its final solution, is, "The Attorney General should be responsible for setting security standards and for ensuring that court facilities meet physical standards for security." Notice that word "ensuring." Local authorities should be responsible for providing security to meet the AG standards, not ensuring security. Local authorities simply provide the security personnel, but they do not ensure the security. The report goes through several pros and some of the cons of that provision.

One of the very germane things is that if you adopt that, if the province is responsible for ensuring security but does not have to provide the security personnel, and the authors of the report note this, the province is not exposed to open-ended liabilities.

Given this bill and the way it is worded, with the very broad terms



being that the local authorities shall ensure the security of the building, I say to you that what that means in terms of the context of this report is that the municipalities have been hit with open-ended liability. At least given the discussion that goes on within the Anderson report, the local municipalities, as I read this bill, have now been hit with open-ended liability. I think municipalities ought to have a chance to address that.

In terms of having the Ministry of the Attorney General be responsible for ensuring security but having local authorities deliver it, there are a couple of negatives. One of the negatives, and again I suggest that municipalities should have the opportunity of looking at this, is that some municipalities may view the explicit responsibility for court security as an undue financial burden on police budgets.

Municipalities have addressed that in part, but they have addressed it, I would suggest to you, in the sense that they feel they are only responsible for providing security guards. If you allow the open-ended word in the bill, "ensuring security," I suggest to you that their liability is for much more. The police budgets would be liable for much more than just providing security guards or security personnel.

Finally, a negative side of the proposal that is recommended in the report is that there is an unwillingness of the province to assist municipalities in increasing court security, and the unwillingness of the province to increase court security is unlikely to satisfy the judiciary. Would you not know it, this is actually in the report.

This report canvasses the problem with the judiciary that even if security is stepped up, it might not meet the approval of the judiciary and the problems might continue. Really, should the municipalities not have a chance to look at that issue and debate it? We have noticed it. We saw it today at the old city hall where the supervisor of security said, "Even though I provide three and sometimes more security officers in the courtroom, the judges may not think it adequate and simply adjourn court."

It seems to me all that has been done, if I read this act the way it is written now in Bill 187, is that you have just handed that hot potato over to the municipalities. I think the municipalities, in view of the fact that is addressed in this report, ought to have a chance to look at it and respond to it because we are clearly not raising a bogus issue here. This report alludes to that problem.

Would you not know it, after canvassing all of this, the report finds that there is a lack of consensus. It finds that even the people who were on this committee could not agree that the problem is that difficult and that thorny. I think there again that municipalities ought to have the opportunity to respond to some of those issues and some of those questions. And what are the thorny parts? What are the reasons that lead to a lack of consensus?

Well, the financial obligation of the province: I want to say that the report says that the province is inevitably involved and that it would be unrealistic to put back the clock as though there had never been an increase to the per-household grants nor any arrangements by the province to compensate municipal police in Metro Toronto and certain other jurisdictions. Even the report recognizes that the province has a financial obligation here and it is not well met by the \$3 per-household grant.

The report canvasses all of those financial possibilities. It canvasses how the province in the future should pick up its end of the financial

responsibility. The report is that clear. It says: "Look, if you are going to discuss this issue and you want to arrive at a rational conclusion, you have to discuss how the province should, in the future, meet its financial responsibilities here." Should it be by means of unconditional or conditional grants? Should it be by means of some other method?

Should the province perhaps assume responsibility for transportation of prisoners but leave courtroom security up to the police? Maybe that is the way to do it. Maybe that is the way the province can control its costs here, because the province is clearly concerned that it might be hit with an unlimited cost. So there are various ways of the province's getting involved in this and recognizing its involvement yet limiting its costs, rather than passing the whole thing over to the municipalities and hitting them with all of the costs.

Finally, the report actually sets out a series—

Mr. Chairman: I wonder if I can interrupt you just for one purpose.

Mr. Hampton: Sure.

Mr. Chairman: It appears as though we never really set a time to which we were sitting. I think we have sat until five every day this week, as I recall. The clerk has to make arrangements for tomorrow if we are going to be sitting here. I would like to get some sort of semblance of whether we are sitting tomorrow, so she can go do it now.

Mr. Sterling: I would prefer not to, but I am willing to come. I can be here for about an hour in the morning, but that is my preference.

Mr. Chairman: Okay. Mr. Polsinelli?

Mr. Polsinelli: I was really hoping that we would finish the bill today, but the House has given us the authority to sit five days. If we do not complete the bill today, I think we should sit all day tomorrow.

Mr. Chairman: All I am trying to find out really now is whether I should instruct the clerk to make arrangements for tomorrow, so that she is not caught doing it at the last minute. She has to get home as well.

Mr. Sterling: I think the agreement was to sit to 4:30 and then past 4:30 with unanimous consent.

Mr. Chairman: Is that what it was? Yes, that is right. I think that was the case. We have got five days, we have been allocated five days.

Mr. McGuinty: On that point, you say we are limited to five days?

Mr. Chairman: We were given five days by the House leaders to deal with this matter.

Mr. McGuinty: Is that a limitation?

Mr. Chairman: That was an allocation of time given to us during the recess of the Legislature. It is by no way a limitation on when we can sit.

Mr. Kanter: I will point out that this morning we took a tour. It was at the suggestion of one of the opposition members, but it certainly was not blocked. Everyone agreed to it. I would point out that I think we have

been pretty reasonable in acceding to some of the requests of the opposition on this. I would hope that we could finish the bill in a reasonable period of time, whenever we might.

Mr. Chairman: I think I have got a flavour that we are sitting tomorrow, so I will so instruct the clerk. You can go back to what you were doing, Mr. Hampton. You have the floor.

Mr. Polsinelli: What were you doing, Mr. Hampton?

Mr. Hampton: Since it is 4:30, and I gather that by agreement beforehand we agreed to sit until 4:30 every day, I would move adjournment. I will finish off the few brief remarks I have tomorrow morning.

Mr. Chairman: You are moving adjournment?

Mr. Kanter: I was wondering why we could not at least pursue this point. Mr. Hampton clearly has made a speech of somewhat extensive nature. Rather than losing the thread of this, I think that—

Mr. Hampton: I am trying to show you how substantive—

Mr. Kanter: I appreciate his comments. I am just wondering if we could not complete this. At least one of the members of the other opposition party indicated that he wanted to speak. Perhaps they could speak and then we could vote on this issue today.

Mr. Sterling: I have an engagement at six o'clock, so I have got to get back to my apartment before I go.

Mr. Kanter: In Ottawa or in Toronto?

Mr. Sterling: Toronto.

Mr. Kanter: You have got a little while before six. While we are on this issue, perhaps we could just finish this issue. That would be my suggestion, that we not adjourn at this time.

Mr. Sterling: I think you would have to extend it. I think it is adjourned at 4:30.

Mr. Chairman: I understand from the clerk that this is correct, that the agreement was to sit until 4:30 and it could be extended only by unanimous extent. I will ask whether we have unanimous consent, despite the fact that it is academic at this point.

Interjection.

Mr. Chairman: I am not sure what the question is if he is not here. Does that mean that unanimous consent might be gotten from the other parties? Do we have unanimous consent to sit till five o'clock?

Mr. Kanter: Yes.

Mr. Farnan: No.

Mr. Chairman: I see noes, so we do not. We stand adjourned until 10 o'clock tomorrow morning.

The committee adjourned at 4:33 p.m.



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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE  
POLICE AND SHERIFFS STATUTE LAW AMENDMENT ACT  
FRIDAY, MARCH 10, 1989  
Morning Sitting



STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitution:

Faubert, Frank (Scarborough-Ellesmere L) for Mr. Chiarelli

Clerk: Deller, Deborah

Staff:

Revell, Donald L., Senior Legislative Counsel

Witness:

From the Ministry of the Attorney General:

Offer, Steven, Parliamentary Assistant to the Attorney General (Mississauga North L)

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

Friday, March 10, 1989

The committee met at 10:22 a.m. in room 228.

Mr. Chairman: Now let's have some smart comments. I recognize a quorum.

ORGANIZATION

Mr. Chairman: Before we go back to Mr. Hampton, Mr. Sterling had asked us to bring to the committee copies of the Henderson report. I have a copy, and the clerk advises me that there are copies for all committee members. I do not think we are going to be able to get on with it today.

Mr. Sterling: No, I suspected that we would not get on with it today. My purpose in raising it was that I, along with some other members of the Legislature, have had a significant number of telephone calls about this report. I guess it is a rather comprehensive report.

I do not know, Mr. Chairman, what we should do about it. I guess the process was that we were supposed to go through it, look at the recommendations and make a "nonpartisan" recommendation on it, which as I understand it is similar to the process followed by the federal government dealing with federally appointed judges and federal court judges.

If we are not going to take the time to do that, then a report goes back to the Legislature and to cabinet that we are reporting without recommendations. The timing in particular is a problem associated with this report in that this is supposedly done every three years; by the time this committee is going to have dealt with it they are going to be into the next report.

I do not know whether the process is really of any benefit to the judges or cabinet or anybody else in terms of making a determination on this thing. I think we should make a decision. Are we, in the next two or three months, going to take some time to deal with this? If we are not, then I suggest we report it without recommendation or table it back in the Legislature, whatever the clerk would advise as the appropriate step.

Mr. Chairman: We are at present in the middle of what we were directed by the House to do, and until we accomplish that we really cannot set any other agenda. You had asked for it; I simply raise it. I guess we are back into the question of the bill we are now discussing.

Mr. Kanter: Mr. Chairman, can I respond to Mr. Sterling's—request I guess it was—and try to set up a procedure for dealing with this? I have some sympathy for his request. I too, as a member, have had some requests from people about taking some action on this report, but in essence I think it is a matter of procedure and scheduling at this point. Basically, you are requesting that this matter be considered or perhaps a decision be taken that the committee not consider it or report it without recommendations.



My suggestion would be that the report go to the subcommittee of the standing committee on administration of justice for consideration as to whether it could be scheduled at some point and how long it might take, that kind of thing.

I would personally like to see it considered here and have some determination made by this committee so that the process is moved along. I just do not think this morning, right now, is the proper time to do it. The subcommittee basically takes care of scheduling these things.

Mr. Chairman: I do not think Mr. Sterling was suggesting that. As I said, we already have our directions: it is this bill and then Bill 4, and we are still into this. By continuing in this discussion I guess we are delaying any response in the dealing with it.

Mr. Sterling: What I am ultimately asking, Mr. Chairman, through you to the parliamentary assistant, is that we have some guidance from the Attorney General (Mr. Scott) and the other ministers who would normally have legislation that would be dealt with by this justice committee. When the subcommittee meets, basically the rules of the game are that government legislation and other government business normally has first priority, then come the other things. This is one of those other things.

I would ask the ministers who would normally have legislation referred to this particular committee if they foresee in their legislative program a problem whereby we would not be able to get at it before, let's say the end of June. If that be the case, then I suggest that in the first meeting we are involved in here after we return on April 25 and are reconstituted, etc., we then turn the report back without really looking at it if in fact the justice ministers cannot see that they are going to be able to get at it in the next two or three months. I just make that request. Let's leave it and go on.

Mr. Chairman: Mr. Offer would like to comment.

Mr. Offer: I want to express to you, Mr. Chairman, and through you to all the members of the committee, that this is an extremely important report and it is always up to the steering committee—in fact, on any committee—to order its affairs in dealing with matters, be it legislation of government nature or reports of opposition nature. I can let all members know that the Attorney General and myself very much want to deal with that particular report at the earliest opportunity this committee feels it should be dealt with. We want to deal with this report.

Mr. Sterling: I accept that, but ultimately the subcommittee must listen to the government side, as this committee must approve any business; therefore Mr. Hampton and I, when meeting with you, accept basically your recommendations and make suggestions and try to negotiate if there is a great difference of opinion.

What I am saying is I think we have to be foursquare with the judiciary and the people who are calling us on their behalf and say that if we are not going to deal with it by the end of June, then I would like to not deal with it, in effect, and shove it on to the next step of the process.

1030

Mr. Hampton: Can I just get in on this—very, very briefly?

Mr. Chairman: We were going to blame it all on you, Howie, to say that you are why we are not getting on with it; we are not going to do that, though.

Mr. Hampton: I'll take that if it happens to come my way.

Like Mr. Kanter and like Mr. Sterling, I have received numerous phone calls from counsel who I gather act for the Association of Provincial Criminal Court Judges and from some provincial court judges in my own neck of the woods. I echo Mr. Sterling's comments, and Mr. Offer's, that I think the subcommittee should meet on this and try to set out a schedule. If we cannot, then we can move it on up the chain so at least it gets considered somewhere.

Mr. Chairman: Might I suggest that perhaps when we travel on Bill 4, the subcommittee could get together up in—

Clerk of the Committee: Howie won't be there.

Mr. Chairman: Howie won't be in Thunder Bay?

Mr. Hampton: I think I can make it to Thunder Bay.

Mr. Chairman: If you are making it to one of those, I think maybe the subcommittee could meet at that time and discuss this. I agree, I think it is something that, since it was referred to the justice committee, should be given—

Mr. Sterling: I do not want to beat a dead horse, but Howie and I, as representatives of the two opposition parties, are not in the same position as the government in terms of knowing what the agenda is going to be. We can only discuss it if in fact the government has worked out what they want us to do in the next two months and puts that proposal forward.

Mr. Chairman: As I understand it, the whips got together and set our agenda for us. It was not necessarily the government. Is that not right?

Mr. Sterling: But before it gets to the whips, it is really the Ministry of the Attorney General that is setting the program.

Mr. Offer: If I could just reiterate, the Attorney General's ministry is very anxious for this committee, in ordering its affairs, to deal with this report. I do not know if I can be any clearer than that. Let us sit down in terms of the steering committee and deal with this thing.

Mr. Chairman: Let's leave it then, if it is agreed upon that we would deal with it by way of a subcommittee meeting in either Thunder Bay or at whatever point we have all the representatives.

Mr. Hampton, you were in full flight. If you would like to take off again, please proceed.

POLICE AND SHERIFFS STATUTE LAW AMENDMENT ACT  
(continued)

Consideration of Bill 187, An Act to amend Acts as they relate to Police and Sheriffs.

Mr. Hampton: As I was saying yesterday, the Anderson report then goes on to make a series of recommendations dealing with all of the intricate parts of the court security question. For example—

Mr. Chairman: Can I just interrupt you for a second again? It occurs to me that Mr. Sterling told us he had some difficulty in staying on today. I think maybe, without requiring you to commit your hand, we should get some idea of when, if at all, we may deal with this matter today.

I have some reluctance to deal with a vote on it in the absence of a member of the third party. We can technically do it, but I think the tradition around here has been that when it is clause-by-clause, there be a member of each party. If there is some possibility we are going to deal with this today, I would like to get Mr. Sterling's agreement that we deal with it with a quorum but in the absence of representatives from all parties.

Mr. Sterling: I cannot give that agreement. If you choose to do that, you choose to do that. Unfortunately, I have constituency office appointments in my home town all afternoon and I just cannot duck out of those. I am going to be leaving here at 12 noon. I do not think Mr. Runciman is going to be here. I tried to get him to be here, but he also has other commitments in his riding.

Mr. Chairman: Can I put it back to Mr. Hampton, then, without asking him to tip his hand, whether it is feasible or reasonable that we would be able to take a vote while Mr. Sterling is here.

Mr. Hampton: We may be able to. I am not going to extend this. I am, basically, I would say three quarters of the way through this thing. In another 15 minutes I think I can summarize exactly why I think this report is so important.

Mr. Chairman: Okay. Go ahead.

Mr. Hampton: The report finally comes down with a series of recommendations that I do not think can be ignored. they ought to be the subject of discussion, not only by this committee but by those organizations and police forces that will be involved with this legislation.

First, the chairman of that study recommended, "The government accept the principle that the Ministry of the Attorney General is the responsible ministry for ensuring," and here is that word ensuring again, "that the level of security in the courts of Ontario is adequate." I think that first paragraph spells out exactly what the levels of concern ought to be here. Somebody in the provincial government must be responsible for ensuring the level of security in the courts of Ontario is adequate. The recommendation is that the Ministry of the Attorney General have that responsibility.

Second, "The government accept the principle that the municipal police, or where applicable the Ontario Provincial Police or the Ministry of Community and Social Services, be responsible for the actual security in the courts and for the transportation of prisoners." While somebody is responsible for ensuring the level of security, somebody else ought to be responsible for providing that security.



"The duties of the sheriff be limited to matters concerned with the administration of the courts under the sheriff's jurisdiction and that the sheriff be no longer empowered to hire staff for court security duties." That is a recommendation that is not out of line with the legislation; but again it ought to have some response, there should be legislative amendments to reflect all these things. I would suggest to you the legislation we have before us now does not place the responsibility for ensuring security in the proper place, i.e. with the provincial government.

"The moneys appropriated to the Ministry of the Attorney General be adequate to ensure," and there is that word again, "that the police can provide the desired level of court security and provide for the safe and secure transportation of prisoners, both at the least possible cost to the government of Ontario."

Obviously, the financial question is not an irrelevant question if this study report comes forward and says that the Ministry of the Attorney General has to have extra money, or additional money, to ensure that all of this happens properly. If the government's own study finds that money is not an irrelevant consideration, and it is such a relevant consideration that moneys ought to be appropriated to the Ministry of the Attorney General, then that is obviously an issue that has to be discussed; and I do not find it anywhere in the bill, nowhere at all.

"The Ministry of the Solicitor General be the technical adviser to the Ministry of the Attorney General on ways and means for ensuring court security and transportation of prisoners; and be responsible for ensuring co-ordination of these activities between police forces in order to ensure the most economical use of resources." When this study had finished looking at the situation, it obviously came to the conclusion there was a technical question, a technical question of training, co-ordination and organization that cannot be ignored. Yet again I do not find any reference to that in the legislation.

"That police forces which are responsible for court security be encouraged to use special constables wherever this is consistent with economy and efficiency, and this be a requirement in order to qualify for provincial financial assistance for these court duties." Obviously the Anderson report had in mind a mechanism that would not only ensure financial responsibility but would also ensure technical adequacy, and that the supervisory mechanisms were in place so that all of this would happen. Again, you do not find this in the bill. You do not find any mechanisms such as this in the bill.

"The Ministry of the Solicitor General be responsible for providing, on a cost-recovery basis, centralized training for special constables hired under previous recommendation, to the extent that there is a local demand." So the Anderson report noted that there was a problem with training. If you are going to provide adequate court security and you are not going to use sworn police officers, you have to be concerned with training and there has to be a mechanism to deal with training.

1040

I do not find any reference to this in the legislation. It is as if no problem of training exists, and yet as we saw yesterday at old city hall, working under the conditions that some of those people must work under training is obviously of very great concern.

"The government begin immediately to implement a program to upgrade the physical security of court properties."

Even after the Anderson committee had finished its study and even after it has gone through all of these ways which may be used to increase the efficiency of security guards, it still notes that the provincial government has to implement a program to upgrade the physical security of court properties, and without that it all comes to naught.

The Anderson report also provides an implementation guide as to how all of this should be done. I am just sad to say that I think if the implementation guide that is proposed here had been followed a much more satisfactory piece of legislation could have come forward, and probably a much more satisfactory process.

One of the implementation guidelines is that, "The Attorney General, in consultation with the Solicitor General, provide guidelines governing the minimum levels required for court security." I do not see anything in this legislation dealing with guidelines and who is responsible for guidelines.

"The Solicitor General, on behalf of the Attorney General, establish with the police forces what it costs them now to provide court security and prisoner transportation and obtain from them their plans for meeting the Attorney General's standards."

One of the things I found particularly unsatisfactory in this week of committee meetings is that the financial information we have received has not been very dependable. As I heard Ministry of the Attorney General staff admit, there is a great deal of misunderstanding out there at the sheriff's office level as to what part of their time is spent on security, what part of their time is spent on decorum, what their responsibilities are for security. As I say, I think the financial information we have before us is inadequate.

Again, the implementation strategy says get this information: What does it cost municipal police to transport prisoners, what does it cost municipal police for the security they now provide, and so on?

"Local police plans be examined by the Attorney General, in consultation with the Solicitor General, to ensure that any additional cost to the province is kept to a minimum, and the conclusions reached be discussed with the local police."

I think what the Anderson report is really speaking to in that recommendation is this, and we have noted it: You have a disagreement as to what is the appropriate level of security. One way of dealing with that is for the province to simply slough off responsibility on municipalities and then say, "It's not our problem any more." But I think what General Anderson had in mind here was that if the province and the municipalities could get together on what is an adequate level of security, it then becomes very difficult for a given judge or judges to say, "I won't accept it."

If it is three against one on an issue, the municipal government, the provincial government and the local municipal police force all saying, "We consider this level of security adequate," there is not much room for an individual judge to move. He or she can hold out and be very recalcitrant, but I suggest to you, knowing the nature of politics and the nature of how social organizations work, that then becomes a very difficult proposition.



Why the government has not chosen to follow that kind of strategy is beyond me, but again there it is. The general provides the government with an implementation strategy that I think would work to solve this problem and the government has obviously passed over it.

Mr. Farnan: Absolutely.

Mr. Hampton: "A decision be made on whether to continue with per household grants or find some other way of financing."

Finally, "The Attorney General prepare a submission comprising a comprehensive security plan

We have not seen at this committee anything remotely close to a comprehensive security plan. All we have seen is, "Give it to the municipalities and let them handle the puck for a while." As I say, not a very fair way and not a very effective way to deal with it.

General Anderson even provides a summary of the cost of transportation of prisoners. He goes through the whole gamut. He talks about the Ministry of Municipal Affairs per-household police grants and he says that the grant payments in 1986-87 were \$8.7 million. That is what municipal police forces are getting out of that \$3-per-household grant to cover the cost of transporting prisoners. He does not even talk about that \$3-per-household grant as being there in order to ensure court security as well. He simply talks about it in terms of transportation of prisoners. He says if you look at that \$3 per-household grant, it works out to \$8.7 million that the province is giving municipal police forces.

Then he looks at the costs involved for the Ontario Provincial Police, the Ministry of Correctional Services and municipal police in transporting prisoners. What does he find? He finds that municipal police already spend in excess of the \$8.7 million that they are getting under this \$3-per-household grant. The municipal police across the province are spending \$12 million transporting prisoners.

What do the Ontario Provincial Police spend? They spend over \$4 million transporting prisoners; the Ministry of Correctional Services, almost \$500,000. If you factored in what some of the Ministry of Municipal Affairs grants may be used for, you would assume that it is indirectly contributing \$4 million. So the total cost of transporting prisoners alone is \$21 million, yet the government is saying that the \$8.7 million in municipal grants, based on the \$3 per household, is adequate not only to transport prisoners but also to provide court security.

Mr. Farnan: Did the government see this report?

Mr. Mahoney: What is this, a tag team?

Mr. Chairman: That is a footnote.

Mr. Hampton: A very good footnote. I like that point.

Mr. Farnan: Did the government read this report? That is the question.

Mr. Chairman: They couldn't get a copy. That is what happened.



Mr. Hampton: Finally, General Anderson deals with his concept of basic security operations. He deals with transportation to the courthouse, what he envisages it ought to involve; security for the judiciary, what he envisages it ought to be; courtroom security, what he envisages that ought to be; and courthouse security, what he envisages that ought to be: all the components that are directly before us here.

I really want to say to the government members of this committee I think they are doing the government a big disservice if they do not give municipal organizations and municipal police organizations out there an opportunity to respond to this and to join in a genuine debate on the issue of court security.

In my view, the problems that have been presented could be handled and dealt with if the government engaged in a little more consultation and a little more consideration of someone else's point of view, rather than trying to steamroll this through and pretend that it is not a major piece of legislation, that it does not have major financial implications for municipal police forces and municipalities, and that the problem is somehow going to be solved by simply passing this legislation. The government is clearly wrong in all those things and it ought to think again.

Those are the reasons for my motion and those are the reasons I think this report is so important, the reasons I think if the government went at this again from a slightly different angle it would come up with a much better solution and would look a lot better politically in the eyes of several members of the public and several communities out there.

1050

I urge the government members to think about it for a while. If you think that simply by observing what the powers that be in the Liberal Party say you ought to do you are going to ensure your own political security, I think you are wrong. At a certain point some government backbenchers have to say, "Look, other points of view have to be considered here." That is what I urge you to do.

I am urging you to act in your own self-interest here, because I think what the government has presented in Bill 187 is wrong-headed legislation that is going to get the government into a lot of trouble. I think the government ought to try again; ought to distribute the Anderson report, ought to have a good discussion, ought to look at compromise. You would all come out of it much better off. The interests of the administration of justice in Ontario would be better served and the interests of better policing in Ontario would be better served.

If General Anderson is right, it costs \$21 million to transport prisoners and it will cost \$20 million to ensure adequate court security. You are only giving up \$8.7 million in the \$3-per-household grant. Municipal police forces will have to take a lot of money out of policing budgets and put it in court security budgets. They have been saying to us all during the week that they do not have that money; and they certainly do not have the \$33 million, which by the government's own figures as contained in the Anderson report will be required. They do not have \$33 million to take out of their police budgets and fork over for court security .

That is the motion. I urge government members to consider it.

Mr. Chairman: Are there any other comments? Mr. Sterling.

Mr. Sterling: I think Mr. Hampton has put forward the case very well in terms of the argument that perhaps we should not go ahead with clause-by-clause at this stage.

I only want to point out two additional facts. First, members of this committee should know the structure of the committee in terms of General Anderson. As far as I can read from the names, it was an interministerial committee.

It was not a committee composed of police chiefs, or it did not have any police chiefs on it as far as I read the composition in appendix B of the Anderson report. It was not composed of any municipal elected officials. I am not sure—there were three Ministry of the Attorney General representatives—but I do not know if any sheriffs were on this particular committee.

I do not know if anybody who was on the ground in the courthouse was involved with the committee that put forward the options and gave some direction to the government on Bill 187. Therefore, I would say that notwithstanding the fact it made very many recommendations which would have made Bill 187 much more palatable, the committee itself was, in my view, faulty in terms of its construction and has led to the complaint that we have heard over the past week that adequate consultation has not taken place. If in fact the police chiefs of Ontario, the Ontario Association of Chiefs of Police and all the other structures had been represented on the committee forging the Anderson report, I suspect we would have heard less about the problem with regard to consultation.

The other point I would like to bring forward, because the other members of this committee have not had a chance to read the Anderson report—and that is unfortunate—that notwithstanding, I think it is important that they know—in terms of the confidence of the committee, what confidence that committee had in making its final recommendations—I think it is important that they know that at the final meeting of the committee—this is the interministerial committee which wrote the Anderson report, which is the basis for Bill 187—first of all the committee says it was comfortable with the analysis of the four options that it put forward, but the committee itself was divided on whether the report had sufficient supporting evidence to enable the committee to identify preferred options and to make specific recommendations.

So the committee itself, in my view, recognized that it did not have enough evidence to put forward recommendations to this government in drawing up Bill 187. When the committee could not come to a consensus, it decided that the report should be submitted with the various options and that the conclusions and recommendations should be the conclusions and recommendations of General Anderson and General Anderson alone.

Therefore, you have a report of a committee purportedly made up of 12 persons, but in the final analysis you have the recommendations of one individual.

It says there were three issues on which the committee was divided. So the committee itself has identified three issues on which it was divided. They were important issues as well, and Mr. Hampton has alluded to them.

I am not surprised that when you add the Anderson report to the hearings that we have heard this week, the people who are going to be involved in implementing Bill 187 and responsible under Bill 187 feel aggrieved that they have not been properly consulted.

I have to tell you, notwithstanding the fact that I am in opposition and this is a political issue, because of the financial part involved and all the rest of it I think the government is making a mistake for the justice system in going ahead with Bill 187 in that the committee was not representative of people who are on the ground, people who have to do the job.

The committee was divided; and even so the government has not followed the recommendations of the Anderson report as put forward. Therefore, I think that you are not really doing anybody a favour by taking this step. My humble opinion is that the status quo is better than what you are offering in Bill 187, given you would do so without the co-operation of the police and municipalities to put what you have proposed in place.

Therefore, I support the motion of Mr. Hampton.

Mr. Chairman: The motion is on the floor. It has been stated.

Mr. Kanter: I commend your brevity.

Mr. Farnan: I probably have a comment.

I wonder if I could ask for a recess at this time. I wish to consult with my colleague. Could I have a 20-minute recess?

Mr. Kanter: If I could comment: I think that would be irregular since Mr. Farnan put his name down yesterday on the speaker's list.

Mr. Chairman: Mr. Farnan did not ask that of you; he asked it of the chair.

Mr. Kanter: I just thought I would—

Mr. Farnan: A 10-minute recess might be sufficient.

Mr. Kanter: —indicate my personal views on this important subject.

Mr. Chairman: Mr. Farnan, I am not sure if you were here and I do not know whether it would make any difference if I reiterate what Mr. Sterling's difficulty is. He will have to be gone from here by noon. You were not here when we raised that and I do not know whether Mr. Hampton has had a chance to tell you that. I do not know whether that changes your request or not.

You certainly have rights under the rules, if we were to hold the vote now, to—

The clerk indicates I should inquire if there is unanimous consent for such an adjournment.

Is there unanimous consent?

Mr. Farnan: For a 10-minute break.



Interjections.

Mr. Kanter: Prior to the vote? If he is asking for it prior to a vote, that would certainly be acceptable.

1100

Mr. Polsinelli: So are we ready to call a vote on this?

Mr. Chairman: No, we are not. I am just asking for unanimous consent; I am not asking you for a discussion on it, but is there unanimous consent?

Mr. Kanter: No.

Mr. Chairman: All right. There is not unanimous consent, so we will continue to sit for 20 minutes.

Mr. Farnan: Recess for 20 minutes.

Mr. Chairman: No, no; there is not unanimous consent.

Mr. Sterling: I think Mr. Farnan is confused by the procedure. If the vote is called, Mr. Farnan, you can request a 20-minute recess at that point in time, but not during the debate as such does the member have the right to call a recess.

Mr. Chairman: That is right. If you wish to ask for it, you can ask for up to 20 minutes to gather your caucus when the vote is called. That is why I was going to call the vote.

Mr. Farnan: Oh, I see.

Mr. Chairman: At that point in time, if you wish to ask for that, you can ask for up to 20 minutes.

Mr. Farnan: Okay. Basically, it is unfortunate. I would have appreciated having 10 minutes to discuss with my colleague. Now that the matter is put down, I am sorry that the government members on the committee saw fit to deny that very simple request; but it is in keeping with the general behavioural pattern that has been—

Mr. Mahoney: Arrogance is the word.

Mr. Chairman: I do not want to move you back to the topic, but I think you should go back to the topic of the motion that you are interested in, Mr. Farnan, Mr. Hampton's motion.

Mr. Farnan: The motion basically is a request to reserve consideration of clause-by-clause until the groups and organizations appearing before the committee on Bill 187 have the opportunity to obtain copies of the Anderson report, to study the contents of the report and to make written submissions on the implications of the report.

Let's just talk about the reasonableness of the request. Is it reasonable that groups, municipalities and police forces that are interested in this particular piece of legislation and who will be impacted as a result of the passage of such legislation in its present form should have access to the Anderson report?

Already we are aware that particular groups—I believe the Ontario Association of the Chiefs of Police and the Association of Municipalities of Ontario when they appeared before the committee—indicated not only that they were knowledgeable that the report existed but were appealing—seeking through the freedom of information process—for access to the report.

They believe that it is relevant and they are concerned that this report has not been made available to them. In their brief they say: "We suggest the contents of the Anderson report are vital to the discussions being entertained here today, and hereby encourage the Attorney General to make the report available to the standing committee on administration of justice and all groups appearing before it to address the implications of Bill 187."

I have spoken to many of the delegations and they expressed unanimous concern that a government-commissioned report pertinent to the issue, and certainly in its primary recommendation contrary to the direction the government is intent on taking, is being withheld.

How can you discuss an issue properly without full information? Indeed, as we discussed this yesterday Mr. Faubert made the very sensible observation that in order to make an informed judgement on Bill 187 it was only fair that the Liberal members of the committee should have the same access to the Anderson report that the opposition members have. As the committee is well aware, the opposition members of the committee have copies of the report.

Mr. Faubert was expressing a point of view with which most reasonable men and women would concur: do not make a decision from limited information. I suggest that Mr. Faubert was probably saying more than that. I suggest he was probably saying, "Don't withhold information that is relevant to a serious issue."

Mr. Chairman: I think we will let Mr. Faubert's words speak for themselves, Mr. Farnan. I do not think they need interpretation.

Mr. Farnan: Is it necessary at this time to go back to the record to examine what Mr. Faubert said in order to clarify that point?

Mr. Chairman: No, but I am going to interrupt you for a second. I would like to get some guidance from the committee. Mr. Sterling has indicated to us that he will not be here beyond noon. If that is the case, then I would like to get some direction from the committee about whether we might let Mr. Sterling simply leave now. He has constituency appointments and so on.

Recognizing that Mr. Sterling wants to be here for a vote, if there is not going to be a vote on either this or anything else before the time he has to leave, I would like to get some idea of where we are going, whether we can anticipate that; otherwise there is not much point in Mr. Sterling's staying. We could accommodate him and we could also agree we would simply adjourn at noon as there is nothing further that could really be done this afternoon. I am asking for some direction.

Mr. Mahoney: We would all like to leave now if we are not going to have a vote. Friday is normally constituency day; I am sure all members of the committee have rearranged their schedules with considerable difficulty.

Mr. Chairman: I am just trying to get some feeling as to what is happening here.

Mr. Mahoney: I have no problem with Mr. Sterling leaving as long as I can go with him. I will even drive him to the airport; it is not a problem.

Mr. Chairman: As time in that regard is a-fleeting, can I get some idea? I suppose it would be from you, Mr. Farnan. If you are going to continue then there really is no point in Mr. Sterling staying here. Perhaps we should also agree that we would adjourn at noon, because there would be no point in sitting this afternoon, either. I am putting it directly to you. You do not have to answer if you do not wish, but it would be nice to—

Mr. Farnan: You know I always try to be as brief as possible in my remarks, and as focused as I possibly can, nevertheless you are also only too aware that this is a very critical issue to many significant groups in the community, and as a result I do believe I have a responsibility to continue to bring up all the relevant points that concern this issue.

1110

Mr. Chairman: All I want to know, Mr. Farnan, if I could, is whether or not we will take a vote before noon. If not, then I think the committee members themselves should perhaps be aware of that, so that we do not—

Mr. Farnan: I want to put it this way: I would never, for example, consciously drag out or prolong the proceedings, but I do want to ensure I do justice to the issue by bringing up and reviewing many of the very relevant and important arguments that were brought before the committee by the various delegations, and that could take a little time.

Mr. Chairman: All right. I think I am getting where you are coming from. That could be done equally during clause-by-clause. We are presently discussing a motion by Mr. Hampton which has had considerable debate; but go ahead, I think I know where you are coming from. Mr. Sterling, I guess, can be guided by what he thinks you are saying.

Mr. Farnan: I was talking of the reasonableness of this particular motion. I would ask members of the committee to put yourselves in the shoes of the municipal politicians, the police associations and other affected parties. Ask yourselves the question: were you a municipal politician and the provincial government of the day was bringing forward—quite suddenly, I should add, because the various players in the process did not receive any considerable advance warning. Neither did they receive any invitation to provide input on the proposed legislation. So the municipal politician and the police chief are suddenly hit with proposed legislation that shifts responsibility from the provincial government to the municipality, not only shifts responsibility but also transfers the financial burden.

Consider the disappointment of these particular groups when they discover that not only is the government moving ahead with this legislation in what can only be perceived as a rather hasty manner, but is doing so at a time when perhaps the



most significant report, a report commissioned by the government itself, has been withheld from all of the parties. We cannot be surprised if there is a certain amount of cynicism, and even anger on the part of some of the chief players, that the government would act in such a manner.

Is it reasonable that they receive this report? Let me say that every delegation that appeared before this committee—municipalities and police associations—was in opposition to the legislation before the committee. I wonder how many other municipalities and police forces would have taken the time to respond had they realized the devious manner in which the government was operating. I say "devious" quite consciously, because what other perception can one have of a government which suppresses information that is pertinent to a major decision?

And so I go back to the member for Scarborough—Ellesmere (Mr. Faubert). As a government member he did have the insight to realize that this report was relevant, based on what he had heard from the selected readings from the report by opposition members. I think it is worthwhile to note that we went through a process in which Mr. Faubert was not allowed to vote to express his views.

The motion put forward by my colleague the member for Rainy River (Mr. Hampton) that this report should be released to all members of the committee and to all the municipalities and police associations was one that Mr. Faubert, by his comments, appeared to endorse in a very clear manner. Mr. Faubert requested a 10-minute meeting with his caucus before the vote. As members will all recall, we took a recess over the lunch hour and when we came back we voted on whether the report should be released.

You will also recall that the government members of the committee, noting Mr. Faubert's absence—I would suggest to you that this was part of an organized and planned strategy—insisted that the vote be taken without Mr. Faubert's presence. At that time I argued and presented a motion to the committee chairman that the vote on this vital issue be delayed until such time as Mr. Faubert was present. My concern was that Mr. Faubert had expressed serious concerns, wanted the report released, and therefore it was unfair to Mr. Faubert that the vote be taken without his presence.

We should also note that even had Mr. Faubert been here, the Liberal members would have defeated the release of that document because the vote would have been five to five and therefore the report would not have been released. But not only was Mr. Faubert not allowed to be here to express his view—

Interjection.

Mr. Hampton: It is okay, Frank.

Mr. Farnan: Not only was he—

Mr. Faubert: You might wish to correct the record.

Mr. Farnan: Basically, the government members of the committee could have carried the day without Mr. Faubert's vote. However, they ensured that he was not here because independent thinking on the part of any individual member of the committee was obviously being suppressed.

That is a message that the groups that appeared before us should realize. A lot of people came before this committee and I asked them the question: "What is your hope in appearing before this committee?" The answer was invariably: "We hope that the government will listen. We hope that the government members will listen." Several put forward an option saying, "Well we don't want to prejudge the committee, but we do hope they are open and fair."

1120

Well the Faubert incident, as maybe I should refer to it, is obviously a very clear signal to all of the groups, the municipalities and the police forces, that any independence of mind, any fairness of play and any openness to argument from the presenters of briefs will be crushed and no Liberal member of the committee will be allowed to express the freedom of listening, let alone of voting.

That is a tremendous message, because on the one hand you have the Attorney General saying, "This is cabinet material, it cannot be released;" and on the other hand an individual member of the Liberal Party is being quashed because he dares to express agreement with a very basic principle that you should not make a decision and that you should not make up your mind until you have the relevant information.

As you are aware, I did put forward that motion to the committee that we postpone the vote on whether this information should be released until such time as Mr. Faubert returns. The answer was no. There was not general consensus from the committee. The Liberal parliamentary secretary to the Solicitor General refused agreement.

Mr. Chairman: I do not remember that.

Mr. Farnan: I am reminding you of it.

Mr. Chairman: I do not remember it. It may be that some of the other members of the committee have a better recollection, but I do not remember that.

Mr. Farnan: I do not think that is a very good basis for an argument, Mr. Chairman, to say that you do not remember it.

Mr. Chairman: Mr. Faubert has been here throughout these hearings so I do not know why it would have been put forward, but in any event go ahead.

Mr. Farnan: Let me just simply state that the vote was called. Mr. Faubert was not here. The Liberal members on the committee voted down the motion.

Mr. Chairman: No, that motion was to ask the Attorney General. It was not the way you put it. It was to ask the Attorney General to make available copies of the report. It was originally put forward by Mr. Hampton and you amended it. But it was not along the lines of what you have indicated. It is much different.

Mr. Faubert: May I make a very quick point?

Mr. Chairman: If it is a point of order, you can.

Mr. Faubert: On a point of order, Mr. Chairman: It is a point of order in that you are right in recognizing that it was on the previous motion, not this one, that I spoke against Mr. Hampton's motion, the second motion. Second, the timing of the vote, if you recall, was after lunch. I had had a previous engagement at that time and I indicated that I would be back later. But the point is that I was previously occupied at that point in time.

Mr. Farnan: I accept that.

Mr. Kanter: On a point of order, Mr. Chairman: it seems to me that we have been listening quite patiently to Mr. Farnan for some time now. It seems to me he may be referring to a vote on an issue that was previously decided by this committee.

Mr. Chairman: That is a correct point of order.

Mr. Farnan: I think that is correct. I agree that it was on a motion that was previously—however, it is extremely relevant—

Mr. Chairman: Mr. Farnan, just a second. Under the rules of order, Mr. Kanter has raised a point of order. He is correct. Under the rules you cannot speak to a matter that has been dealt with unless you are planning on moving an amendment. So the point of order is well taken.

Mr. Farnan: Let me say that the issue we discussed earlier, as you so—

Mr. Faubert: Accurately.

Mr. Farnan: —so accurately reflected in your judgement, had ramifications that impinged upon this particular motion. It did deal with the release of the Anderson report; you will agree with that, Mr. Chairman.

Mr. Chairman: It dealt with the question of asking the Attorney General for it.

Mr. Farnan: It dealt with asking the Attorney General for that report.

Mr. Chairman: That is right. It was voted on and it was defeated.

Mr. Farnan: That is relevant, I do believe, to what I am saying: that the committee should be informed and delegates should be informed. Surely to goodness any remarks with regard to the information available to all of these individuals is relevant to the motion before us.

Mr. Polsinelli: Have you concluded your remarks?

Mr. Farnan: No.

Mr. Chairman: You might want to address yourself to the motion by Mr. Hampton—

Mr. Farnan: Let me respond to Mr. Faubert. He quite correctly said that he was not here and that he did have another appointment. I want to put on the record that I accept Mr. Faubert's reasons for not being here.



Mr. Chairman: The question of whether Mr. Faubert was here or not really has no bearing whatsoever on the motion you are speaking to, and I draw you back to the motion.

Mr. Farnan: I think I am speaking to this motion. I am giving a sense of history for the record—

Mr. Chairman: We do not need a history. I am going to call you back to the motion that is on the floor. We do not need a sense of history as to what took place on something that has already been decided by this committee. So I bring you back to Mr. Hampton's motion, which is what you are addressing.

Mr. Farnan: And the record will show—

Mr. Chairman: The record will show nothing. If you want to appeal the decision made by the chairman you have the right to do so. I bring you back to the motion.

Mr. Farnan: Mr. Chairman, I have worked with you for a considerable amount of time on the Sunday shopping matter and I have grown to respect your handling of the committee and your judgement in many of—

Mr. Chairman: That is also ancient history.

Mr. Farnan: But ongoing history, Mr. Chairman. I continue to want to co-operate with you, and it is very rare that I find myself in disagreement. Nevertheless, even good friends like ourselves, concerned about the issue, will from time to time have a difference of viewpoint. I do suggest that the Liberal members of the committee voted against my proposal to postpone the vote until Mr. Faubert came back. That is the reality. Twenty minutes later Mr. Faubert showed up, when the vote had already been taken.

Mr. Chairman: Mr. Farnan, that is exactly what I am saying. It was not a motion. You asked for unanimous consent to delay the vote being taken on Mr. Hampton's motion, that you had amended, until Mr. Faubert returned. Unanimous consent was not given.

Mr. Farnan: You are quite correct. It was not a motion; it was a request for unanimous consent. However, all the facts remains pertinent. Mr. Faubert was not here—

Mr. Chairman: What does that have to do with Mr. Hampton's motion? I am going to bring you back to the motion. You can address the motion as long as you wish; that is your right under the rules of this committee. I want you to come back to the motion Mr. Hampton has made. Whether Mr. Faubert was here or whether he was not here is really not relevant to the issue before us now.

Mr. Faubert: Mr. Chairman, on a further point of order: The issue being referred to by Mr. Farnan—I appreciate his tenacity in trying to bring it forward but the point is that he is referring to the previous motion, the second—

Mr. Chairman: That is not a point; that is out of order.

Mr. Faubert: There were two motions. One was the committee reference, which has been dealt with by the committee. The second, which is before us, is asking for a delay of proceedings until the report has been made available. There were two separate motions. The other one has been dealt with and therefore is out of order.

1130

Mr. Chairman: I have already ruled on that, bringing Mr. Farnan back to the motion.

Mr. Farnan, you can speak as long as you would like, this is your right under the rules.

Mr. Farnan: Thank you, Mr. Chairman.

Mr. Chairman: But please confine your comments to the motion that Mr. Hampton put.

Mr. Farnan: I believe we have covered the background that I wish to read into the record and I will follow your direction—

Mr. Chairman: Thank you.

Mr. Farnan: —and continue to focus my remarks in an area pertinent to the topic.

We should not resume clause-by-clause consideration of this bill until all of the groups have obtained copies of the Anderson report and have made submissions on it, primarily because the Anderson report touches on the basic principles of what Bill 187 is all about. It is the most recently formulated report. It was commissioned by the government of Ontario. It is unfortunate for the government of Ontario that it had recommendations which were in direct opposition to the manner in which the government wants to proceed.

The honest thing to do, of course, would be to be upfront and honest and say they had the report; it cost the taxpayers a lot of money and they were going to throw it out, "But here is the report; we are sharing it with you although we disagree with it."

What the government is doing is extremely devious. It is putting the report in the bottom drawer. It is virtually saying to the taxpayers of the province who paid for the report in the first place, "You have no access to this." Therein is another principle that maybe we should remind the government of: is there any justification in denying taxpayers and their representatives access to a report which they themselves have paid for?

Can you imagine anything as ludicrous: that you would actually go out and tax the people of the Waterloo region and regions across the province and say, "We are taking your tax dollars and we are commissioning a report by General W. A. B. Anderson on court security." When that report has been completed, they are then saying to the residents of Waterloo region and the residents of Ontario: "We don't care if you've paid for this report or not. We've got it. We're not letting it out of our hands. We're putting it in the bottom drawer. Nobody is gonna see it."

"How can you do that?" say the taxpayers. "How can you deny us that?"

"Well it is very simple, my friends. We can do that, because this is a cabinet document." For some strange reason now, it is a cabinet document and nobody can have access to this information.

The government's legislation, Bill 187, is legislation that will impose significant increases in tax dollars on the residents of Ontario for court security and prisoner transfer. In the region of Waterloo alone, we heard Regional Chairman Seiling, in an outstanding presentation to this committee, suggest that it would cost the Waterloo taxpayers an additional \$1 million, and that this would represent an increase of two per cent on the levy.

That is heavy stuff, Mr. Chairman. That is putting your hand right in, deep into the taxpayer's pocket. Not only putting one hand in, your other hand is holding a report which was paid for by the taxpayer and that report says, "Don't do it, it's a provincial responsibility." No wonder government members of the committee are blushing, because basically what you have done is rifled the pockets of the taxpayers—

Mr. Faubert: On a point of information, let the record show we are not blushing, it is a reflection from this paper.

Mr. Hampton: It is that pink paper, eh, Frank?

Mr. Farnan: I do not know what you call this, Dick Turpin or Robin Hood or what sort of analogy you use for this, but basically, in very simple terms: the people of Cambridge, the people whom I represent and whom I talk to in the market, are decent, honest, working people. They do an honest day's work and hope for an honest day's pay. They work hard trying to bring up their families as best they can; paying their bills and looking out for their kids.

This Liberal government says, "Guys, we're going to use part of your tax dollars to make a report, the W. A. B. Anderson report." I am sure that means a lot to the people I am going to talk to at the Market Square tomorrow in Cambridge. I am going to tell them very simply, "You know, the government used your money to commission a report." And they are going to say to me, "Mike, another report?" "Don't worry about it," I will tell them, "they did this report in 1987, you've already paid for this one." "That's good," they will say, "That's great."

"What did this report say?" they will ask me. What can I say to them? "I'm not sure if I can tell you what the report says, because you see I have a copy of the report but it was received unofficially. It came from unidentified sources. The government isn't releasing this report."

The people of Cambridge, in their very sensible way, will ask, "Well why won't the government release this report?" I will say to them, "The government says the report is secret. It has gone before the cabinet and it's secret." "What does that mean," they will ask, "that it has gone before the cabinet and it is secret?" "Well it means that a small number, the inner sanctum of the Liberal Party, has had access to this report."

Then my friends in the Cambridge Market Square will say to me: "Do you mean that they taxed all of us people across the province to write a report so that it would just go to this little group of Liberal cabinet ministers? Is that what happens?"



Mr. Chairman: Surely you will draw their attention to the freedom-of-information act which was passed by you, along with other members of the Legislative Assembly.

Mr. Farnan: "Well," I will say to my friends, "you know that is correct. That is what happened. You paid for it and a small number of Liberal cabinet ministers will have access to that report." "Well why can't we have access to it?" they will ask. "Why can't we have access?" They are going to ask the same question as Mr. Faubert asked, and that makes sense, "Why can't we have access to this particular piece of information?"

They might say to me, "Mike, is this an important decision that is coming down the pipe on court security?" I will say, "Yes, it's an important decision."

In fact, I will say to them, "Your regional chairman, Ken Seiling, appeared before the committee and he presented a very well-researched brief for the region of Waterloo in which he documented very clearly the impact of the government's decision vis-à-vis court security on our region." "What did Ken say when he was before the committee?" they will ask me. I will say to them, "Ken said it's going to cost the people of Waterloo region an extra \$1 million."

"A million dollars," they will say. "Yes, \$1 million is what the regional chairman said, and that's going to be two per cent on your levy." "That's extraordinary. Do you mean, Mike, that we're going to have this extra two per cent on our levy and only those 40 Liberal ministers see the report? That's silly," they will say. "That's ridiculous," they will say, "that all of the taxpayers of the province will pay all this money for a report from the good general and only 40 Liberal cabinet ministers will see it."

1140

Mr. Faubert: The committee may be in agreement with them.

Mr. Farnan: "What did the report say, Mike?" I will tell them that the first recommendation of the report was that the Attorney General should retain responsibility for court security.

Mr. Chairman: I asked your colleague. I would prefer that you not specifically read from the report. I presume you are not going to.

Mr. Farnan: I have not read from the report and I do not intend to read from the report.

I will say to them that the first recommendation—obviously, we normally list things in importance and I suspect that General W. A. B. Anderson is such a man. He was chosen for this job because of his competence. He would not fiddle around with the recommendations in any kind of manner that would make things difficult for the reader, so he clearly states, "Here's the first recommendation." The first recommendation is that the Attorney General should be responsible for ensuring court security.

My friends in the marketplace are going to say, "Mike, isn't the Liberal government, isn't this legislation, isn't this Bill 187 saying: 'We're not going to be responsible any more. We're going to give it to the municipalities?'" I will say: "That's right. That's what's going to happen."

They will say: "Why would the members of that Liberal government spend all the money to commission a report and then only 40 of them read it? I thought there were 94 Liberals down at Queen's Park. Why don't the other 54 members of the Liberal government get a chance to read it?" That is a good question. Mr. Faubert asked that question.

They will say, "Are you sure, Mike, that it says the Attorney General should retain responsibility?" And I will say yes.

Mr. Chairman: Mr. Faubert is not here, but I do not think that is an accurate statement. I do not think Mr. Faubert said that at all. You should be accurate.

Mr. Farnan: As I was saying, the people of Cambridge will reflect and they will say, "This is truly extraordinary." They will say to me: "Mike, isn't this the same Liberal government that campaigned in 1987, just before General Anderson brought in his report, isn't this the same Liberal government that opened its appeal to the voters on a platform of open and accessible government?"

"Don't you remember David Peterson in Cambridge with his sleeves rolled up and his tie down, reaching out and shaking hands: 'Hi, I'm Dave. I'm open. I'm accessible. I'm a friendly guy. I communicate.' Isn't this the way the Premier was packaged during that campaign? Is this really the same Liberal government that was presenting itself as a government of openness and accessibility? Is this the government that's now saying, 'We will suppress information'? Can they have changed so much? Why have they changed so much, Mike?"

Indeed, there are probably members of the government who are asking that question.

I suggest to you, and I will probably say to my constituents in Cambridge, that there is a difference between majority government and minority government. A majority government tends to be a little bit more arrogant, a little bit more aloof, and certainly much more authoritarian than a minority government.

Can you imagine, in a minority government situation, a government trying to suppress a report when the majority vote in the House lay with the combined opposition parties? No, not at all. In a minority situation, this report by now would have been given to the police forces and the municipalities. In a minority government there is honesty, because honesty is forced upon the government. But when you change 48 Liberals in a minority to 94 Liberals in a majority, even those honest Liberals are crushed as majority power exercises itself and says, "This report, paid for by the taxpayers, will not be released."

My friends, I have tried to place before you what is in the minds of ordinary working men and women. It is an extraordinary situation. As I look across the spectrum of the members of this House, I have to say that I am extremely impressed by the knowledge, the background, the intelligence, the experience, the life experiences combined in the members of this House. I would say it is a fine group of men and women, with a great deal of talent, much experience and a great deal of intelligence.



But when it comes down to common sense, I prefer to talk to Frank Crystal in the marketplace in Cambridge; I prefer to talk to Ross Adshade in the marketplace in Cambridge; I prefer to talk to Doreen Russell in the marketplace in Cambridge. These people have common sense. They are going to ask, "Mike, all these guys up there at Queen's Park, these high-powered businessmen who form the Liberal cabinet; these lawyers, these educators, these professionals; and then these men and women who come from working backgrounds, all this great intelligence and experience that exists at Queen's Park—is this the result of their combined intelligence?" That is what we are talking about here. We are talking about the combined intelligence.

Members on the government back benches should be conscious of this, because they are viewed and public perception of them is created by the decisions that are made. Who makes the decision that this document will not be released? Is it the Premier? Is it the Attorney General? Is it the four horsemen of the apocalypse? Is it a larger group made up of members of the cabinet? Somebody said, "This report is not going to be released;" and now the 94 Liberals are going to go along and say, "Whoever said it, we are going to agree that the report should not be released."

"Mike," one of my constituents might ask tomorrow, "was there one Liberal who stood up and said, 'Hey, this crazy. This report should be released'?" I might say, "Well, I am not sure, I think one of them tried to do that, but he was quickly suppressed." I would honestly have to say that not one Liberal had the courage to stand up and say this decision by the Liberal government, by whoever made it, was stupid. I will tell you, when it comes down to the reality of this report's not being released, the people of Cambridge will say: "They have no common sense. Isn't that awful?"

You go to university for years, you do your law degrees, you work your businesses, you write your reports, you make your speeches, and the guy in the market square in Cambridge is going to say, "You know, he may have had an education somewhere or other, but he's got no common sense."

He is going to go into the shop on Monday. They will have their coffee break at 11 and they will sit down and say: "Can you believe those guys up at Queen's Park? There is Mike arguing that this report be released and there is his colleague from Rainy River, who gave an outstanding address on this particular issue, one of the finest researched and"—just a tremendous presentation, very effective, and of course ably supported by our colleagues in the Conservative Party.

Certainly my colleague the member for Rainy River, as the critic of the Attorney General, gave a very well researched and very well documented presentation. But my friends in Cambridge are going to say—

Mr. Chairman: Mr. Farnan, I am going to interrupt you for a second, because I think it is now time to get some idea of where we are going this afternoon, whether we are going to be here, for the benefit of not only the members but also for the information of staff.

I am going to suggest that we break now for the recess, but before I do that I would like to know whether or not we have unanimous consent to return. Do we need unanimous consent to return? Is it the wish of the committee that we return at two o'clock?

Mr. Faubert: You do not need unanimous consent, do you?



Mr. Chairman: We do not need unanimous consent because we are scheduled to sit at two o'clock this afternoon. We will recess for now.

Mr. Farnan: I do have some additional remarks.

Mr. Chairman: You can bring them back at two o'clock. We will recess till two o'clock.

Mr. McGuinty: Do you know when we will adjourn this afternoon?

Mr. Chairman: That will be up to the committee.

Mr. Polsinelli: The agreement is 4:30, I believe.

Mr. McGuinty: Fine.

The committee recessed at 11:55 a.m.



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STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE  
POLICE AND SHERIFFS STATUTE LAW AMENDMENT ACT  
FRIDAY, MARCH 10, 1989  
Afternoon Sitting





STANDING COMMITTEE ON ADMINISTRATION OF JUSTICE

CHAIRMAN: Callahan, Robert V. (Brampton South L)

VICE-CHAIRMAN: Chiarelli, Robert (Ottawa West L)

Farnan, Michael (Cambridge NDP)

Hampton, Howard (Rainy River NDP)

Kanter, Ron (St. Andrew-St. Patrick L)

Mahoney, Steven W. (Mississauga West L)

McGuinty, Dalton J. (Ottawa South L)

Offer, Steven (Mississauga North L)

Polsinelli, Claudio (Yorkview L)

Runciman, Robert W. (Leeds-Grenville PC)

Sterling, Norman W. (Carleton PC)

Substitutions:

Faubert, Frank (Scarborough-Ellesmere L) for Mr. Chiarelli

Poole, Dianne (Eglinton L) for Mr. Mahoney

Clerk: Deller, Deborah

Staff:

Revell, Donald L., Senior Legislative Counsel

## AFTERNOON SITTING

The committee resumed at 2:14 p.m. in room 228.

### POLICE AND SHERIFFS STATUTE LAW AMENDMENT ACT (continued)

Consideration of Bill 187, An Act to amend Acts as they relate to Police and Sheriffs.

Mr. Chairman: I recognize a restless quorum. Who had the floor when last we met?

Mr. Offer: Frank Faubert.

Mr. Chairman: I think it was the honourable member for Cambridge (Mr. Farnan). He was still down at the Cambridge market, were you not, when I—?

Mr. Farnan: Thank you, Mr. Chairman.

Mr. Chairman: You are welcome. Do not stack anything in front of your microphone. We want you to be recorded totally.

Mr. Kanter: We want to hear every word, every syllable.

Mr. Chairman: We are hanging on each—

Interjections.

Mr. Chairman: Your eyes were a little heavy yesterday, Mr. Polsinelli.

This is what you call a pregnant pause. I wonder how they record the guffaws and chuckles.

Mr. Faubert: You can't record the smiles.

Mr. Chairman: They recorded the blushes this morning.

Perhaps we should adjourn for five minutes.

Mr. Kanter: No, no.

Mr. Chairman: Perhaps while Mr. Farnan is gathering his notes we could welcome the member for Eglinton to our midst.

Ms. Poole: I am happy to be here, Mr. Chairman.

Mr. Farnan: Over the lunch hour I had the opportunity to speak to my friend Danny, who is the barber in Cambridge, and discuss some of the things we were talking about this morning. I can tell you that Danny's reaction was precisely the reaction, as I described it this morning, that I would anticipate from ordinary working men and women in Cambridge when faced with the actions of the government vis-à-vis Bill 187.

The bottom line, as I suggested, is that the taxpayers have paid a great deal of money to finance a government report on court security, the principal recommendation of which is that the Ministry of the Attorney General assume responsibility.

Mr. Kanter: They are also paying a lot of money for this committee.

Mr. Farnan: How true; Mr. Kanter brings up the very good point that it does cost a lot of money for this committee. The residents of Cambridge, I know, will recognize the fact that what we are trying to do as the official opposition—

Mr. Kanter: Is stall.

Mr. Chairman: We are discussing Danny, the barber. I just wanted Mr. Hampton to be aware of where we were. Go ahead, Mr. Farnan.

Mr. Farnan: As Mr. Kanter suggested, yes, a committee does require a great deal of money, but it is part of the democratic process. I suppose we have to look at what voice the people have in a democratic process when the government sets itself hell-bent to carry out an exercise and to implement a policy which is in sharp contrast to the wishes of every delegation that has appeared before the committee.

The electorate in Ontario in its wisdom chose to elect an official opposition, albeit a small one. It is, however, preferable indeed to the situation in which Mr. McKenna finds himself in New Brunswick where there is no official opposition.

Even so, this Liberal government seems to want to carry on proceedings as if there were no official opposition. The wisdom of the people of Ontario was that they did not give every seat in the House, all 130 seats, to the Liberal government; and very wisely so, because they foresaw some circumstances in which the Liberal government might not be speaking on behalf of the general public, and this is such a circumstance.

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All members of the committee will recognize the fact that from all the delegations we have heard and in all the presentations that have been made, the arguments are overwhelmingly against the direction that is being taken by the government.

At this stage I would say that the people of Cambridge are saying: "Mike, I'm glad you're down there. I'm really pleased that you are standing up for the people of Ontario in at least suggesting to the government that there is some opposition and some accountability."

Is Mr. Kanter quite right; is it a stalling tactic? No. Basically, it is an attempt by duly elected members of the official opposition to carry out our responsibilities to our electorate to the best of our ability.

You, Mr. Chairman, and my colleagues, know that when you bring forward positive legislation we are the first people to stand up and say: "Well done; we support that legislation." On the contrary, when you bring forward legislation that is flawed, has not been thought out very well, has not had



any broad base of public input, is a passing on of one's responsibility to another level of government that neither solicited nor wanted that responsibility and did not want the financial implications involved with undertaking that responsibility, we as the official opposition are duty-bound to participate in the process and to use those meagre means at our disposal to put up a red flag and say: "Hey, there's something wrong here. The juggernaut has to stop for a little bit. You can't run roughshod over the people of Ontario without due process."

That is why there are checks and balances within the parliamentary system, I would suggest, in order that a government with a majority does not simply say to itself: "We have more numbers, therefore we do what we want despite the fact that people are telling us differently."

However, as a small opposition with scant resources for having more intense deliberation of the issue in front of us, we recognize there is an inevitability in the process; that when the government, with its 94 votes, makes up its mind, it is going to proceed regardless.

All of the evidence we have had to date indicates this is the intent of the government. It is sad to say, but I have not heard a government member say to anyone who appeared before us: "That's a good point, the fact that it will cost \$20 million on the municipalities. Gee, we didn't really look at that aspect, that there would be this extra burden on the municipalities."

That is very relevant. I did not hear anybody seriously consider the arguments that were being presented and say, "Yes, let's look at those points in committee." And I have not heard, and I am sure I will not hear throughout the course of the discussion of this, any single member of the government saying, "Yes, the municipalities made good points on this" or "The police chiefs made good points on this."

What they are going to do is put aside all of the input and they are going to say, "We, the government"—forget about we, the people—"are going to go ahead and we are going to legislate."

The issue of court security is a very, very serious one. I am just going to read a couple of headlines and only the headlines: "Trial Delays Causing Dismissal, Judge Says"; "Cases Thrown Out Due to Underfunded Courts"; "Judge Charges Backlog Sets Free Suspects," and "Judge Says Trial Delays Mean Some Accused Go Scot-Free."

Mr. Chairman: Mr. Farnan, I would like to bring you back to the motion that is before us.

Mr. Farnan: Yes. I read those very few brief headlines into the record for a very specific purpose. The purpose is that there is a growing concern and awareness within the system of the problem of court security, a very serious problem and one that is extremely well documented. In the Report of the Ontario Courts Inquiry of 1987, the Honourable T. G. Zuber had this to say:

"The provision of court security should be the responsibility of a provincial police force operating at the direction of the courts administration division of the Ministry of the Attorney General. To the extent that use of municipal police forces is considered desirable, appropriate arrangements should be made with the municipal authorities involved and adequate funding should be provided for that purpose."

You can see that on one side the judiciary is saying the problem is getting worse and worse, the building stock is in a shocking state. The government is receiving all of this information.

I would like to imagine a scenario for your consideration. I am not saying this is exactly as it happened, but it is a possible scenario. The Attorney General (Mr. Scott) sits down with the Premier (Mr. Peterson) and says: "Dave, we've got a problem."

"What's that, Ian?"

"Dave, you know what is happening out there. The courts are in a mess, the buildings are in a mess, the judiciary is crying out for better security."

"Well, what do you suggest we do about it, Ian?"

"There are really only two things we can do, David. The first option is that we knuckle down and we really try to solve the problem. We get at the backlog of the renovations and some new courts on stream and we do it rapidly, and we beef up the security. But you know, Dave, if we go that route, it is going to cost us a lot of tax dollars. It is a heavy investment. Certainly the \$3 household contribution is not going to cover it. There are going to be a lot of beefs from the municipalities, so we are going to have to up the ante."

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"Well, Ian, what is the other alternative?"

"The other alternative, David, is quite straightforward. We wash our hands of the issue. We say, 'From now on we are not going to be responsible for the security in the courtroom.' How about we pass some legislation handing on this responsibility to the municipalities?"

"Oh," says the Premier. "Gee, we did that with the Sunday shopping issue, do you think we can get away with that again?"

Mr. Faubert: Do you think you can get away with this?

Mr. Farnan: "Well," says Ian—

Mr. Faubert: I am listening, Mike.

Mr. Chairman: And almost all the same players, too.

Mr. Farnan: "Well," says Ian, "it is going to be tough, but we do not have to make the same mistakes as we did on the Sunday shopping issue."

"What do you mean by that, Ian?"

"Well quite frankly, Dave, on Sunday shopping I think we stretched it out too long. We were hung out to dry. The committee was too long."

Mr. Hampton: Too much press.

Mr. Farnan: "There was a lot of negative press. There were a lot of lobby groups."

Mr. Chairman: Is there any on this one yet?

Mr. Farnan: "Basically, I certainly would not like to go through that again."

" Well, we could make it quick and clean, David."

Mr. Chairman: Are you talking to somebody in this committee? There are no Davids here.

Mr. Farnan: "Ian," says the Premier, "I think you are right. How do we go about it? First of all, I would suggest we give no forewarning of what we are going to do."

"Well as far as that goes," says Ian, "we did not give any forewarning on the Sunday shopping either. We just flip-flopped and that was it."

Mr. Chairman: I know that this direction will not cut you off, and I do not intend to do that, but I would like to bring you back to the motion by the honourable member for Rainy River (Mr. Hampton), which does not contain anything about Sunday shopping, or about David or about Ian, or any of these other things. I would like you to come back to the content of the motion.

Mr. Farnan: Absolutely. Of course, the conversation I am presently describing is constructing a scenario in which the Premier (Mr. Peterson) and the Attorney General (Mr. Scott) would be discussing the means by which Bill 187 would be implemented. In that context, Mr. Chairman, I am sure you will agree that everything I have to say is relevant.

Mr. Chairman: I am not sure. You are attributing motives to honourable members of this assembly, which is contrary, I believe, to the rules of order as well.

Mr. Farnan: I do believe that what I am talking about is a possible scenario and I am not saying that on any occasion either of these gentlemen said specifically what I am saying. I am saying this is a possible scenario of a conversation between the Premier and the Attorney General; an interesting scenario.

And so: "No consultation," says Ian, "and brief committee hearings. Fast passage. I think we can get away with it if we do it right."

Mr. Hampton: But hand it over to Steve Offer; he is the better negotiator. Hand off to Offer.

Ms. Poole: On a point of order, Mr. Chairman: Mr. Hampton seems to be getting most upset by the fact that Mr. Farnan is going off topic like this, and maybe as a courtesy to the member for Rainy River (Mr. Hampton) we could get back to the motion.

Mr. Hampton: I have no real concern. I think Mr. Farnan is covering the ground rather adequately here.

Mr. Farnan: I appreciate those comments from my honourable colleague.

Mr. Chairman: I would like the member to stay on the ground.

Mr. Farnan: And so it is that we heard from the delegations a certain sense of anger, irritation and frustration that they had not been properly consulted and had not had access to the Anderson report.



I have a great deal of respect for the judiciary. I think we all have. I can remember as a young boy admiring the appearance of the judge. Of course, in the British system they wore the wigs and the gowns and there was always that stern face. However, you had that sense of wisdom, you had that sense of justice, and even, I would add, that sense of compassion; men of the highest repute—

Mr. Hampton: And now women.

Mr. Farnan: —men and women of the highest repute. As a young boy I had this image of the judiciary, and I think it was commonly felt. When the justices made a pronouncement, one felt it carried considerable weight. Can you imagine when all of the justices, when the judiciary as a group makes a pronouncement, the weight that would carry? So it is, I think, when we look at recommendations coming forward from the judiciary outlining its concerns: we have to accept them with really careful consideration.

Now let's come back to focus here and talk particularly about the report. I regret, of course, that not all of my colleagues have the report. The colleague who just recently joined us will not be familiar with what took place on the committee over the past several days during which a great deal of discussion revolved around the availability of the Anderson report. This was the report by General W. A. B. Anderson which dealt specifically with court security; its main recommendation was that it remain in the hands of the Attorney General. That is the report you may have heard some discussion about.

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The report touches on several of the basic principles of what Bill 187 is all about. Bill 187 does not define court security; the Anderson report does.

I will pass that by you again.

Bill 187, the piece of legislation that we are talking about and that the government wishes to implement, does not define court security. The report, the government-commissioned report by General Anderson, does define court security. But his definition of court security has been put in the bottom drawer. Nobody can see that, except those opposition members to whom the report has been leaked.

The issue of proper court security is very complex. It deals with the security of prisoners and the cost of this security. It deals with ensuring peace and order in the courtroom. It deals with ensuring peace, order and security in the courthouse. It deals with providing special security under special circumstances. It is an extremely complex area that needs definition.

When we went down to the old city hall the other day and had the tour—many of the members who are here will remember going back into the holding cells—we were brought into one little cell, I am sure the members will remember this, and as soon as you walked into that cell there was a stench to high heaven. There were no prisoners in that cell, although it had obviously been used. It was small; it was clammy; and it stunk to high heaven.

What has that got to do with court security, you might ask? Several Liberal members of the committee are nodding their heads and indeed asking me, "What has that got to do with court security?" I will tell you what it has to do with court security. In handling prisoners it is important that the

treatment of the prisoners is such that it creates the atmosphere of positive behavioural patterns. If you create an atmosphere of negative behavioural patterns, you are very clearly adding to the security risk of that building.

I would suggest to you, on my inspection of the holding area, I would question the ventilation. Now the ventilation system may indeed be working, but we did hear from the officers who were present that they have more people in those cells than they were designed for. Obviously these people are already in a very undesirable situation, perhaps aggravated because they feel they are being hard done by or whatever. We are adding a physical circumstance that will aggravate their situation, and will certainly be reflected in the type of work expected of the guards and the potential for unacceptable behaviour in the courthouse or in the courtroom by those in custody.

As it happened, I spoke with the gentleman who is responsible for ventilation in the old city hall area and he told me a great many facts that were of a very disturbing nature. I say to the Liberal members of the committee that even the ventilation of the courthouse reflects its security.

Security is a huge issue, and of course the reality of the matter is that the government wants to pass on the security problem to the municipalities because it is not prepared to address all of these issues.

My friends, General Anderson defined what court security is all about. Bill 187 does not define it. How can you possibly say to the municipalities and the police forces we are asking you to ensure court security when we have not defined it? Each municipality can do what it likes. Each municipality can decide how many officers, what kinds of officers.

If a fatality occurs, who is going to carry the can when nobody has defined what the level of security is or what court security is? Who is going to do it? This is unacceptable.

The Anderson report deals with the financial cost that Bill 187 would impose on municipalities should the—

Interjections.

Mr. Farnan: When I get into a huddle with my quarterback, when he calls the play, we go out and execute. I just hope he is calling the right play, but I am going to run like hell for the touchdown line.

Interjections.

Mr. Farnan: I am going to wrap up very briefly. The Anderson report does deal with the costs of the current prisoner-in-court security system. There are three sources of cost. First, the cost to the province for Supreme and district courts, and Anderson estimates this at \$700,000; second, the cost to the local police forces, including the Ontario Provincial Police, for provincial courts, and Anderson estimates this at \$14 million in 1986; third, the cost to the province of the per household unconditional grants, and Anderson estimates this as \$8.7 million in 1986.

Anderson assumes that half of this \$8.7 million goes towards court security, which would amount to \$4.35 million; and Anderson further estimates that the total cost of court security, excluding prisoner transportation, is \$20 million. Each municipality will thus be impacted negatively from a financial point of view as a result of this legislation.



The Anderson report deals with the cost of the transport of prisoners. I really should be elaborating on these, but I am going to run through them very quickly.

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First of all, the Ontario Provincial Police cost of transporting prisoners to and from court in 1986-87 is estimated by Anderson at \$4.26 million. The Ministry of Correctional Services in 1986-87 paid out \$417,000 to various police forces across Ontario for transportation of prisoners. The municipal police expenditure for prisoner transportation in 1986-87 is estimated by Anderson at \$12 million and half of the \$3-per-household municipal grants of \$4.3 million. The total cost for the transportation of prisoners was \$21 million.

Because the Anderson report defines court security and Bill 187 does not, the Anderson report is vital and critical to the debate. Because the Anderson report provides us with real estimates of the costs of court security—\$20 million in 1986-87; because the Anderson report provides us with the real estimates of the cost of prisoner transportation—\$21 million in 1986-87, and because the Anderson report acknowledges that only \$8.7 million of these costs is covered by the \$3-per-household municipal grant, the report is vital to an informed and open debate on Bill 187.

Moreover, the Anderson report, after considering all of the cost questions and all of the other issues related to court security, recommends a preferred solution. That preferred solution is outlined very clearly in his report. I will not go into it here. It should be the subject of a dialogue between an open and accessible government and the principals who are going to be impacted by the report. The Anderson report makes nine specific recommendations in this preferred solution. Again, while not going into the details of all those recommendations, as was my intent, the Anderson report recommends an implementation strategy for the preferred solution.

I believe that we do have a little time for pause, a little time for sober second thought as the committee wraps up its proceedings today, so that we can all say to ourselves, I hope, "We have heard good presentations, we have not totally closed our minds and we will indeed take the time, between now and whenever we come back to examine this legislation clause-by-clause, to weigh carefully the arguments that were presented by the municipalities and the police associations." I think that is what our constituents would expect of us. I think that is what the legislation demands of us and it is what the role of wise, judicious legislators requires of us.

For all of these reasons, the Anderson report is vital to an informed and open consideration of Bill 187 and it is vital for the proper administration of justice. I am going back to Cambridge and I am going to talk to Danny the barber and all of my friends in the local market and in my constituency. I am going to talk to them about Bill 187 and I am going to solicit their views.

I am going to talk to my police chief and I am going to talk to municipal politicians. I would invite all members of the committee to go back to their respective ridings and to meet with their local councils and meet with their police chiefs; meet with the ordinary residents whose taxes are going to be impacted through the local budgets, and ask for their views so that when we come back to Queen's Park we will indeed have reconsidered and received input from all of the people for whom this means so much.



I want to thank you, Mr. Chairman, for the opportunity of making these few brief remarks, and the committee for listening so attentively.

The Acting Chairman (Mr. Kanter): Thank you, Mr. Farnan. I take it that is the end of your remarks at this time. I take it there may be an understanding among all parties that we will not proceed at this time, but rather adjourn the debate.

Mr. Hampton: We should take the vote on this motion.

Mr. Farnan: Can we not adjourn this debate?

The Acting Chairman: No, I stand corrected. I should have checked with the clerk, as the other chairman no doubt would have done. I do not know whether he is still here or not.

We will take the vote on the motion moved by Mr. Hampton. Mr. Hampton, we are taking the vote on your motion.

Mr. Hampton: Yes.

The Acting Chairman: Do I have to read it or can we dispense with that? I think everyone has it in front of them, but just so it is on the record here as we take the vote, Mr. Hampton's motion is to the effect that we delay clause-by-clause consideration of the bill until the committee has had opportunity to obtain copies of the Anderson report, study its contents and make written submissions on its implications.

All those in favour of the motion by Mr. Hampton?

All those opposed to the motion by Mr. Hampton?

Motion negatived.

Mr. Farnan: What a quarterback.

The Acting Chairman: We will adjourn the meeting at this point. It will resume at the call of the chair. I believe there is a date set for some hearings on Bill 4, and presumably that will be the next time the committee meets, unless the—

Mr. Polsinelli: Perhaps I can suggest that we can ask our chairman to speak with the House leaders to see if he can get us more time during the break to deal with this bill. If our House leaders could make some type of agreement, then the chairman can call us back. If not, it will just be our regular next sitting.

The Acting Chairman: I will request the chairman to—

Mr. Polsinelli: Is that the wish of the committee?

Interjection: Yes.

Mr. Farnan: I do not know whether we can do that without the presence of the—

Mr. Polsinelli: I am just suggesting that we approach our House leaders, and if they can come to some type of agreement—

Mr. Farnan: We better not approach our House leaders without first going through the committee members.

The Acting Chairman: I would think that if we were to proceed with that suggestion the House leaders would communicate with—obviously the Conservative House leader would communicate with the Conservative members, although they are not present today, so I think we could pass that suggestion along to our regular chairman.

Mr. Polsinelli: I see nodding approvals.

The Acting Chairman: I have been instructed I am to bang the gavel and adjourn the meeting.

The committee adjourned at 2:57 p.m.

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